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St. Jacob's, see Edwardsville.
Stanton. see Taylorville.
Strawn. See Pontiac.
Streator, see Ottawa.
Stork, see Toulon
Stanford, See Bloomington.
Sullivan. A. C. Mouser,
Sublette. See Dixon.
Summit. See Sullivan.
Sunoeam See Aledo.
Sycamore. Jones & Bishop
Tamaroa, see Du Quoin.
Tampico J. W. White.
Taylorville, Jno. G. Drennan.
Thompson see Mount Carroll
Thompsonville, See Benton.
Tiskilwa seePrinceton
Toledo, Green & Woods.
Toulon, J. H. Miller.

Tower Hill, see Shelbyville
Trenton, see C. r.y.e.
Tuscola, Leslie G. Macpherson.
Urbana, Thomas J. Smith.
Vermillion, see Paris
Viola see Aledo.
Virden, see Carlinville.
Wapello, see Clinton.
Warren, see Galena.
Warsaw see Nauvoo.
Washington, see Pekin.
Watseka, Kay & Evans.
Watson, see Effingham.
Wa shville, See Litchfield.
Wat rman, see Bycamore.
Waukegan and a. towns in Lake Co. Norman A. Lough
Waverly, s e Jacksonville..
Woodson, see Jacksonville
Waynesville, see Clinton
Weldon, see Clinton.
West Jersey, see Toulon
White Heath see Mont cello.
Windsor, See Shelbyville.
Wilmington, J. W. Merrell.
Woodbury, See Kewanee.
Wyoming, John E. Decker.
Wyanet, see Princeton

INDIANA.

Adams, see Greensburg.
Advance see Monticello.
Akron, See Rochester.
Alamo see Crawfordsville.
Albany, see Muncie.
Alexandria, See Anderson.
Ambia see Fowler.
Anderson, Marcellus A. Chipman.
Angola, Emmett A. Bratton.
Arthur, see Petersburg.
Augusta, see Petersburg.
Andrews, see Huntington.
Argos, see Plymouth.
Ari, see Churubusco.
Arlington See Rushville.
Barnettsville, See Monticello
Batesville, see Greensburg.
Barcers' Mills, see Bluffton
Battle Ground, see LaFayette
Berne, See Geneva.
Billingsville, see Liberty.
Bloomington, Jas. F. Morgan.
Bluffton, Wilson, Todd & Dugley.
Boonville, see Rockport.
Bowling Green, see Brazil.
Brazil, McGregor & Compton.
Boswell, see Fowler.
Boubon, see Plymouth.
Boyleston, see Frankfort
Bremen, see Plymouth.
Bristol, See Elkhart.
Brookston, See Montice'lo.
Brownsburg, See Danville.
Brownsville, see Liberty.
Brooklyn, see Martinsville
Brunswick, See Crown Point
Bryant, See Geneva.
Buel City, See Sullivan.
Burlington, see Kokomo.
Butler O. L. Young.
Cadiz, see New Castle.
Calley's Corner, see Liberty
Cambridge, see Richmond.
Camden, see Portland.
Carbon see Brazil.
Chrisney, see Rockport.
Clay City, see Brazil.
Carlisle, See Sullivan.
Carthage, See Rushville.
Canaan see Madison
Centerville, see Richmond.
Churubusco, W. S. Gandy.
Clarksburg, see Greensburg
Clinton, see Newport.
Cloverdale, see Greencastle.
Coatesville, See Danville.
Colfax, see Frankfort.
Collins, see Churubusco.
Columbia City, see Churubusco
Crawfordsville, see Ladoga.
Creston, See Crown Point
Crown Point, Griffin & Son.
Dana, see Newport.
Danville, M. W. Hopkins.
Darlington, see Crawfordsville.
Dayton, see LaFayett
Decatur, Peterson & Huffman
Delphi, John C Odell.
Deputy, see Madison
Disco see N. Manchester.
Dublin, see Richmond.
Dugger, See Sullivan.
Dunkirk, See Portland.
Dunlapville, see Liberty.
Duer, see Crown Point.
Dupont, see Madison
Earl Park, see Fowler.
Eaton, see Muncie.
Elkhart, Orville T. Chamberlain.
Ellettsville, see Bloomington
Elwood See Anderson,
Eminence, see Martinsville.
Eng'ne, see Newport.
Evansville, CHAS L. WEDDING.
Fairbanks, See Sullivan
Falmouth, see Rushville.
Farmland, See Winchester.
Farmersburg, See Sullivan
Filmore, see Greencastle.
Fort Branch, See Princeton.
Fort Wayne, Robertson & Branden
Fountain City, see Richmond.
Fowler, Geo. Wadsworth.
Francesville, see Princeton.
Frankfort Suit & Bivouac.
Frankton, See Anderson.
Fremont see Angola.
French Lick, see Paoli.
Galveston, see Logansport.
Geneva, Thorp & Drew.
Grass see Newport.
Glenwood See Rushville.
Goodland See Kentland.
Goshen, see Elkhart.
Gosport, see Spencer.
Grandview, see Rockport.
Graysville see Sullivan.
Greencastle, Geo. Hathaway.
Greensboro, see New Castle.
Greensburg, David A. Myers.
Greentown, see Kokomo.
Grovertown, see Knox.
Hamlet see Knox.
Hamilton see Angola.
Haubstadt, See Princeton.
Huntingsburg see Rockport
Hammond See Crown Point
Hazelton, See Princeton.
Hardinsburg, see Paoli.
Hellers Corners, see Churubusco.
Hebron, see Valparaiso.
Hessville, See Crown Point.
Hillsboro, see Richmond.
Hobart, see Crown Point.
Homertown, see Petersburg.
Huntertown see Churubusco.
Huntington, G. W. Stultz.
Huron, see Paoli.
Inwood, see Plymouth.
Jamestown, see Danville.
Jasper, see Rockport
Jeffersonville Howard & Reid
Jerome, see Kokomo.
Knox, S. A. McCrackin.
Kokomo, Valle & Cooper.
Kempton, see Tipton.
Kewanna, See Rochester.
Keystone, See Bluffton.
Kingsland, See Bluffton.
Kirklin, see Frankfort.
Knightstown, see New Castle.
Kouts see Valparaiso
Lafayette, John F. McHugh.
Ladoga, L. J. Coppage.
La Grange, F. D. Merritt.
Lancaster, see Huntington.
La Otto, see Churubusco.
La Porte, Weir & Weir.
Lebanon, see Danville.
Leiroy, See Crown Point.
Liberty Centre, See Bluffton.
Linden, see Crawfordsville.
Linn Grove, See Geneva.
Lizton, see Danville.
Logansport, W. S. Wright.
Lowell, See Crown Point.
Lynn, See Winchester.
Mace see Crawfordsville.
Manilla, See Rushville.
Marlboro, See Rensselaer.
Martinsville, Adams & Newby
Madison, Bellamy & Copeland
Merriam, see Churubusco.
Merom, See Sullivan.
Merrillville, See Crown Point
Michigan City, See LaPorte.
Michigantown, see Frankfort.
Middlebury, see Elkhart.
Middletown, see New Castle.
Milhousen, see Greensburg.
Milroy, See Rushville.
Milton, see Richmond.
Mishawaka, see South Bend.
Mitchell, see Paoli.
Monon, See Monticello.
Monticello, Reynolds & Sellers.
Mooresville, See Martinsville
Morgantown, See Martinsville
Morris, see Greensburg.
Monrovia see Martinsville.
Montgomery, see LaFayette
Mount Etna see Huntington.
Mt. Vernon, See Evansville.
Muncie, Watternouse. & White
New Castle, see Muncie
New Carlisle see South Bend
New Cordon, See Geneva.
New Lebanon, See Sullivan.
North Madison, see Madison
New Paris, see Elkhart.
New Point, see Greensburg.
Newport, Adams & Littlepage.
New Ross see Crawfordsville
Noblesville, See Anderson.
North Salem, See Danville.
North Judson, see Knox.
Nottingham, See Bluffton
Orangeville, see Paoli.
Orland see Angola.
Orleans see Paoli.
Ossian, See Bluffton.
Oxford see Fowler.
Owensville, See Princeton.
Paoli Thomas B. Skirk.
Parker see Winchester.
Paragon see Martinsville
Patoka, See Princeton.
Patton see Sullivan
Pendleton, See Anderson.
Perrysville, see Newport.
Petersburg, K. P. Richardson
Pierceville, see Petersburg.
Pittsboro, see Danville.
Pittsburg, See Sullivan.
Plainfield, See Danville.
Pleasant Lake, see Angola.
Pleasantville, See Sullivan.
Pleasant Ridge, See Rensselaer.
Plymouth, B. D. Crawford.
Portland, Cornelius Corwin.
Poneto, see Bluffton
Princeton, R. M. J. Miller.
Raleigh, see Rushville.
Red Key, See Portland.
Remington, See Rensselaer.
Rensselaer, Mordecai F. Chilcote.
Reynolds, See Monticello.
Richmond, Geo. Coale, J. P.
Ridgeville, See Winchester.
Roann, see N. Manchester.
Roanoke, see Huntington.
Rockville, see Greencastle.
Rockport, Logsdon & Kramer
Rockville, Price & Johnson.
Rome See Tell City.
Ross, See Crown Point.
Rossville, See Frankfort.
Royal see Logansport.
Rushville, Frank J. Hall.
Russellville see Greencastle.
Russiaville, see Kokomo
Salem, Asphaugh & Lawler.
San Pierre, see Knox.
Sardinia, see Greensburg
Scircleville, see Frankfort
Sedalia, See Frankfort.
Selma, see Muncie.
Shelbourne, see Sullivan
Smithville, see Bloomington.
South Whitley, See Churubusco
Scicleville, see Frankfort.
Shoals, see Paoli.
South Bend, T. E. Howard.
Spencer, see Brazil.
Spiceland, see New Castle.
Stafford, see Bloomington.
Stinesville, see Bloomington.
Stockwell, see LaFayette
St Paul, see Greensburg.
Sullivan, Hays & Hays.
Surrey, See Rensselaer.
Tell City, W. S. Lamb.
Terre Haute, H. B. Jones.
Tocsin, See Bluffton.
Troy, See Tell City.
Union City, See Winchester.
Unionville, see Paoli.
Valparaiso, Bartholomew & Crumpacker
Vera Cruz, see Bluffton
Veraling, See Bluffton.
Versailles, Wm. D. Wilson. C. H. Wilson.
Vincennes, Viehe & Evans
Wabash see N. Manchester.
Wakarusa, See Elkhart.
Walcott, See Monticello.
Walkerton, see South Bend.
Walton, see Logansport.
Waterloo, see Butler.
Waveland see Crawfordsville
Waynetown see Ladoga.
Westport see Greensburg.
West Baden, see Paoli.
West Point, see LaFayette
Wheeler, see Valparaiso.
Wingate, see Crawfordsville.
Zanesville, see Bluffton

IOWA

Abingdon see Fairfield.
Aden, White & Clarke.
Agency, see Ottumwa.
Afton, see Creston.
Ainsworth see Washington.
Alden See Ackley.
Algona, F. M. Taylor.
Allerton, E. L. Hart.
Arcadia, See Carroll City.
Alton see Orange City.
Altoona, See Des Moines.
Allison, Craig & Smith.
Andrew, see M. quoketa.
Aspinwall, see Denison.
Astor, see Denison,
Angus, See Boone
Anita, See Atlantic.
Adlington, See Allison.
Ashton, see Sibley
Avoca, See Council Bluffs,
Ayersmire see Kimmetsburg
Bagley, see Guthrie Centre.
Baldwin, see Maquoketa.
Bancroft, See Algona.
Bartlette, See Hamburg.
Bassett, See New Hampton.
Batavia, see Fairfield.
Battle Creek, See Ida Grove.
Bayard, see Guthrie Centre.
Bedford, G. B. Paddock.
Belle Plain, See Vinton)
Belmond, see Eagle Grove
Bellevue, see Maquoketa.
Bentley, see Winterset.
Bevington, see Winterset.
Big Rock, See Davenport.
Blairstown, See Vinton.
Boone Hunt & Whitacer.
Boonsboro, Ritchie & Greene.
Bonaparte, see Clarinda.
Brayton See Audubon.
Breda, See Carroll City.
Brighton, see Washington.
Bristow, See Allison.
Bristol, see Northwood
Buffalo, See Davenport.
Burlington, and all towns in Des Moines Co. John C. Power.
Burt, see Algona.
Dyersville, See Dubuque.
Calliope, see Elk Point, Dak.
Carroll City, Jos. M. Drees.
Carroll, See Carroll City.
Cedar Rapids, and all towns in Linn Co. A. B. West
Camanche, See Clinton.
Canton, see Monticello.
Carlisle, See Indianola.
Carson, See Council Bluffs.
Cascade, See Dubuque.
Casey, see Guthrie Centre
Castalia, see Ossian.
Cambridge, see Nevada
Cedar Falls, H. C. Hemenway
Cedar Bluffs, see Tipton.
Center ville, see Tipton.
Centerville, A. J. Baker.
Charlton, M. E Thorpe.
Churdan, See Jefferson.
Cleveland, see Charlton.
Charles City See Nora Springs
Chelsea See Traer.
Cherokee, M. Wakefield.
Chillicothe, see Ottumwa.
Cincinnati, see Centerville.
Clarinda, Hepburn & Shummell.
Clarksville, See Allison.
Clayton, see McGregor.
Clearfield, see Bedford.
Clarion, see Eagle Grove.
Clear Lake, See Mason City.
Clermont, see West Union.
Clinton, Geo. B. Young.
Clearfield, see Creston.
Colfax, See Newton.
College Springs, see Clarinda
Colfax, see Nevada
Columbus Jc., see Wapello.
Conesville, see Muscatine.
Conrad, see Grundy Centre.
Conway, see Bedford.
Corydon, See Allerton.
Cooper, See Jefferson.
Corning, Maxwell & Dale.
Council Bluffs, Smith, Carson & Harse
Crawfordsville, see Washington
Creston, John M. Hayes.
Cromwell, see Creston.

Curlew, see Emmetsburg
Dallas Centre, see Adel.
Dakota City, see Humboldt.
Davenport, A. J. Hirschl
Danville See Burlington.
Dayton, see Fort Dodge.
Dedham, See Carroll City.
De aware, see Manchester.
Deroy, see Charlton.
Delta see Sigourney.
Delmar, See Clinton.
De oto, see Adel
Denison. D. L. Boynton.
Des Moines, Callender & Smith.
De itt. See Clinton.
Dexter. See Adel.
Dorchester, see Lansing
Dixon, see Davenport.
D on, e Rock Rapids.
Dover, see Keokuk
Dow City. see Denison.
Dubuque. Utt Brothers.
Dumont, See Allison.
Dunlap, See Logan.
Durant, see Tipton.
Dysart, See Traer.
Eagle Grove, C. O. Bailey.
E rlham, see Winterset.
Early see Odebolt.
East Port. see Hamburg
Eddyville, see Ottumwa.
Eldon, see Ottumwa.
Elberon, See Traer.
Elgin see West Union.
Elkader see McGregor.
Elk Port, see McGregor.
Elliott, see Villisca.
Ely. see Cedar Rapids.
Emmetsburg. C. E. Coheon
Epworth. See Dubuque.
Essex, ee Clarinda.
E therville op r & Allen.
Exira ee Audubon.
Fairfield. R. F. Ratcliff.
Fairport, see Muscatine.
Farley, See Dubuque.
Farmersville | see Rockwell City.
Farragut See Hamburg.
Fayette. see West Union.
Festina. see Ossian.
Fe tus, ee North wood
Fletcher, see Odebolt.
Fonda see Pocahontas.
Fontanelle, see Winterset.
Forrest | Martin Cooper, Co. City, | Att'y and J. P.
Fort Dodge, A. E. Clarke.
Fort Madison Casey & Casey
Fowler. see New Hampton.
Franklville. see Ossian.
Fremont, see Oskaloosa.
Fredericksburg, see New Hampton
Ft. Atkinson see Ossian
Galla, See Ida Grove.
Garrison, see Vinton.
Gilden, See Carroll City.
Gilmore. see Pocahontas.
Goshen see Mount Ayr.
Gladbrook. See Traer.
Glasgow, see Fairfield
Goodfield, see Page Grove.
Gowrie, F. L. Easley.
Grafton, See Northwood.
Granville see Orange City.
Grand Junction, see Jefferson
Gravity, see Bedford.
Gray, See Audubon.
Grafton, see Northwood.
Greene. See Allison.
Greenfield, see Winterset
Greeley, see Manchester.
Griswold see Atlantic.
Grundy Centre Hess & Hayes.
Guthrie Centre. W. D. Giffin.
Guttenburg see Mc Gregor.
Hasbur. see Carroll City.
Hawarden. See Elk Pt. Dak.
Hamburg. Stow & Hammond
Hancock. See Big Grove.
Harlan, Macy & Gammon.
Harper Ferry see Lansing.
Harper. see Sigourney.
Havelock. see Pocahontas.
Hartley, see Spencer.
Hawkeye see West Union.
Hedrick, see Sigourney.
Hepburn see Clarinda.
Hi h Lake. see Estherville
Holland, see Grundy Centre.
Holstein. See Ida Grove.
Hoone s s e Orang City.
Hubbard, see E dora.
Hudson, See Cedar Falls.
Humboldt. A. D. Bicknell.
Indianola, Henderson & Berry
Ionia, See New Hampton.
Iowa City, A. E. Swisher.
Imogene, see Hamburg
Ireton see Orange City.
Irvington, see Algona.
Jefferson, Z. A. Church.
Jolley see Rockwell City
Kellerton. see Mount Ayr.
Kellogg. See Newton.
Keota. see Sigourney.
Kelo, see Gowrie.
Kensett, see Northwood
Kent, see Creston.
Keokuk. W. B. Collins.
Kingsley. see LeMars
Lake City, see Rockwell City.
Lake Mills see Northwood.
Lake Park, see Spirit Lake.
Landen, see Tipton.
Lansing, L. F. Benbows.
Lawler. see New Hampton.
Laurens, see Pocahontas.
Leighton, see Oskaloosa.
Lettsville. see Wapello.
Le Claire, see Davenport.
Lehigh, see Fort Dodge.
LeMars, Amos & Allene.
Lenox, see Bedford.
Lewis. See Atlantic.
Libertyville. see Fairfield.
Linevill e, See Allerton.
Little Sioux, see Logan.
Livermore, See Humboldt.
Lockridge, see Fairfield.
Logan, J. W. arnhart.
Lo ville. see Rockwell City.
Lone Tree, See Iowa City.
Lucas see Charlton.
Lyon See Clinton
Macedonia. see Council Bluffs
Madrid see Emmetsburg
Manchester. Bronson & Leroy
Manly, see Northwood.
Manning, See Carroll City.
Manson see Rockwell City.
Manville, see Northwood
Mapleton. J. D. Rice.
Maquoketa, G. L. Johnson.
Marshalsburg, see Sigourney.
Marengo, see Victor.
Marion. see Cedar Rapids.
Marne, See Atlantic.
Marshalltown, J. H. Parker.
Mason City. Miller & Liggett.
Masonville, see Manchester.
Mauloe. see Orange City.
Maynard, see West Union.
Maxwell see Nevada
McGregor. Asahel Chapin.
McPaul. see Hamburg
Mediapolis, see Burlington.
Menlo. see Guthrie Centre.
Merrill, see LeMars.
Milford see Spencer.
Milo see Indianola
Miles, see Maquoketa.
Milford. see Spirit Lake.
Minburn, see Adel.
Minden see Council Bluffs.
Mitchellville, see Des Moines
Modale, see Logan.
Mo. Valley. See Logan.
Moingona, see Boone.
Mondamin, see Logan.
Monroe ee Newton.
Montour see Traer.
Montrose, see Keokuk
Morning Sun. see Wapello.
Mount Ayr. Morris & Allyn.
Monmouth see Maquoketa.
Mo. Valley. see Logan.
Moravia. see Centerville.
Morrison, see Grundy Centre.
Moulton, see Centerville.
Mount Etna, see Corning.
Mount Auburn. See La Porte.
Mount Pleasant } Woolsen & Rabb.
Murray. See Osceola.
Muscatine. T. R. Fitzgerald,
Nashua. see New Hampton
Neola, see Council Bluffs.
Nevada J. A. Fitchpatrick.
New Albion see Lansing.
New Hampton. J. H. Powers.
New Hartford see Allison.
New Market, see Bedford.
New Sharon, see Oskaloosa.
Newton, Jas. H. Kerr.
Nichols see Muscatine.
Nodaway see Corning.
Nora Springs, R. S. Wheeler.
Northwood, Pickering & Hartley.
Oakland, see Council Bluffs.
Ossage and all towns in Mitchell Co } F. F. Coffin.
Odebolt, Charles E. George.
Orange City, Pitts & Kissey, Have abstract of Title
Oskaloosa, H. W. Gleason
Otho. see Fort Dodge.
Owen see West Union.
Ogden, see Boone.
Ottumwa. S. K. Adler.
Oxford Mills, See Clarence.
Paton, see Gowrie.
Petersburg see Allison.
Paton, See Jefferson.
Patterson, see Winterset.
Pattonsville, } see Rockwell Rapids.
Paulina, see Sanborn.
Panora, see Guthrie Centre.
Percival. see Hamburg.
Perry, see Adel.
Peru, see Winterset.
Percival, see Hamburg
Peterson, see Spencer.
Pleasant Plain, see Fairfield.
Plover, see Pocahontas.
Pochontas, Bradley & Harlan.
Prairie City, See Newton.
Preston, see Maquoketa.
Plum Hollow, see Tilmburg Plymouth, see Mason City.
Polk City, see Des Moines
Pomeroy, See Rockwell City
Postville. see Lansing.
Prescott. see Corning.
Primghar, see Sanborn.
Princeton, see Davenport.
Randalia. see West Union.
Sandusky, see Keokuk
Salina, see Fairfield
Ramsey, see Algona.
Redfield. see Adel.
Red Oak. Smith McPherson.
Redding. see Mount Ayr.
Reinbeck. see Grundy Centre.
Reubens. see Pocahontas.
Rolfe see Pocahontas.
Remsen, see LeMars
Richmond. see Washington.
Ripley. see Jefferson.
River Sioux, see Logan.
Riverton. see Hamburg.
Riverside see Washington.
Rock Falls see Mason City.
Rockford see Nora Springs.
Roselle. See Carroll City.
Rock Rapids. H.B. Pierce
Rock Valley. see Orange City.
Rockwell City, | Mattison & Riley.
Rodman, see Emmetsburg
Roland, see Nevada
Russell. see Charlton.
Ruthven. see Spencer.
Sabula, see Maquoketa.
Sac City. see Odebolt.
Sanborn. Warren Walker.
Sayrorville. see Des Moines.
Schaller see Odebolt.
Seney, see LeMars.
Seymour, See Allerton.
Scranton, see Jefferson.
Shellsburg, See Vinton.
Shell Rock, see Allison.
Sheldon, see Sanborn.
Shenandoah, see Hamburg.
Sheridan. see Orange City.
Sibley see Spirit Lake.
Sidney, see Hamburg
Sigourney, | Sammison & Brown
Sioux City and all towns in Woodbury Co } J. P. Blood.
Solon see Iowa City.
Southerland. see Sanborn.
Spencer. E. C. Hughes.
Spirit Lake see Ossian.
Spirit Lake. Fred L. Rice.
Springdale. see Tipton.
Stuart, see Guthrie Centre.
Station, see Villisca.
St. Charles, see Winterset.
Steamboat Rock. see Eldora.
Stanwood, see Tipton.
Story City, see Nevada
Stratford. see Gowrie.
Sully, See Newton.
Summit, see Indianola.
Swan Lake, see Estherville.
Tabor, see Hamburg
Templeton, See Carroll City.
Tingley, see Mount Ayr.
Tipton. Wolf & Landt.
Traer, see Win erset.
Union, see Eldora.
Unionville. see Spencer.
Vail, see Denison.
VanHorne, See Vinton.
Van Meter, see Adel.
Victor, H. F. Garretson,
Villisca, W. H. Redmond
Village Creek, see Lansing
Viola, see Keokuk
Vinton Ray Billingsley.
Waucoma, see West Union
Wall Lake, see Odebbolt
Wapello and all towns in Louisa Co. | E. W. Tatlock
West Side see Denison.
Waterloo M. T. Owens.
Washburn see Cedar Falls.
Washington. Dewitt & Eicher.
Webster City. Chase & Chase.
Welman see Washington.
Wellsburg, see Grundy Cntr.
Wesley, see Algona.
West Branch see Tipton.
West Liberty, see Muscatine.
West Union. } S. B. Zeigler I. M. Weed.
West Bend, see Emmetsburg
West Point, see Keokuk
West Chester see Sigourney
Whitemore, see Algona.
Wilton. see Muscatine.
Winterset, A. W. C Weeks.
Whittemore, see Algona.
Williams } See New town } Hampton.
Wolcott. see Davenport
Woodbine, see Logan.
Woodstock, see Eagle Grove
Zearing, see Nevada

KANSAS.

Abilene, see Solomon City.
Alma. George G. Cornell.
Altoona see Neodesha.
Assaria, see Salina
Americus, see Emporia.
Ames. see Clyde.
Arrentine, see Wyandotte.
Armondale, see Wyandotte.
Atchison, Bailey & Baldwin.
Atwood M. A. Wilson.
Augusta, see Eldorado.
Bavaria, see Salina
Beloit see Cowker City.
Belle Plaine. See Wellington
Bennington, { see Solomon City.
Blue Rapids. { W. H. H. Freeman.
Burlingame. Wm Thompson
Bronson, See Kingman.
Burr Oak see Jewell City.
Burrton, see Newton.
Buffalo. see Hays City.
Bismark, see Alma.
Bradford, see Clifton.
Bronson, see Fort Scott
Brookville, see Salina
Burlington, | Geo. E. Manchester.
Canton. See McPherson.
Carmond, see Council Grove
Cawker City Frank J. Kelley
Cedarvale see Sedan
Centralia see Seneca.
Chanute, see Erie.
Chautauqua see Sedan.
Cherokee See Girard.
Chetopa. Leroy Neale,
Cheney, see Wichita.
Circleville, see Holton
Clay Center. } M. M. Miller. Geo. O. Blake.
Clear Water, see Wichita.
Cleveland. See Kingman.
Cloverdale See Sedan.
Conway. See McPherson.
Clifton. J. W. Chadwick
Clyde. C. W. Van DeMark.
Colony. see Garnett.
Council Grove, | John ton & Bertram
Coffeyville, see Independence
Cherryvale. see Independence
Columbus, } Coulter. Beall & Shearman.
Cresson, see Stockton.
Derby. see Wichita.
Delphos, see Solomon City
De Soto, see Olathe.
Dodge City and all towns in Ford Co } Thomas Sloan Jones.
Douglass. see El Dorado.
Downs, see Cawke City
Dunlap. see Council Grove
Edgerton, see Olathe.
Emmon, see Norton.
Effingham. see Atchison.
El Dorado. Eugene E. Carr.
Elgin. see Sedan.
Elk Falls, see Howard.
Elmdale. S. N. Wood.
Elk City, see Independence
Ellinwood, see Great Bend

Ellsworth, R. W. Carter.
Emporia, P. P. Herman.
Enterprise, see Solomon City
Erie, C. A. Cox.
Eskridge, see Alma.
Farlington see Girard.
Farmer burg Se Sedan.
Fellowsburg See Dodge City.
Florence, see Peabody.
Fontana see Paola.
Fort Scott Harris & Spencer
Frankfort Geo. Brownell.
Fulton see Ft Scott
Galva, see McPherson.
Gardner, see Olathe.
Garnett A. J. Smith.
Gaylord Webb McNall.
Girard James Brown.
Glen Elder, see Cloud City,
Great Bend Wm. H. Dodge.
Greeley, see Garnett.
Grenola, see Howard.
Grinnell, see Hayes City,
Hartshills See Sedan.
Haysville See Pratt.
Hays City, C. W. Reader.
Herndon, see Atwood.
Hiattville see Newton.
Harper Sam. S. Sisson.
Hartford, see Emporia.
Harveyville, see Alma.
Hepler, See Girard.
Hillsboro, see Marion Centre.
Hillsdale, see Paola.
Hoyton Hayden & Hayden.
Howard A. M. Bowen.
Humboldt, G. A. Amos.
Hunnewell See Wellington.
Huron, see Atchison.
Hutchinson, Zimmerman & Taylor.
Independence, J. R. Ziegler.
Iola John C. Gordon.
Ionia, see Jewel City.
Iuka See Pratt.
Kingman, William Green.
Kansas City, see Wyandotte
Key West, see Burlington.
Kinsley, see Dodge City.
Kirkfield See Dodge City.
Kirwin May & Busse
Laudell see Atwood.
Laur , see McPherson.
La Cygne J. V. Donaldson
La Fountain see Neodesha.
Leabo, see Burlington.
Leavenworth, J. D. Shafer.
Lehigh, see Marion Centre.
Lenora, see Norton.
Leon, see Eldorado.
Le Roy, see Burlington.
Lincoln Centre, } see Solomon City.
Lindsburg, see McPherson.
Linn, see Clifton.
Little River, see Ellsworth
Linn, See Greenleaf.
Liberty, see Independence
Lawrence, see Howard.
Louisburg, see Paola.
Louisville, see R. S. Hick.
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Mankato, see Jewell City.
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Mount Nebo. See Pratt
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McPherson, O. P. Lindsay.
Motor see Stockton.
McCune, See Girard.
Milan, see Wellington.
Minneapolis, } see Solomon City.
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Monmouth, See Girard.
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Spring Creek, see Sedan.
Spring Hill see Olathe.
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Buchanan, see
Cape see Port Huron.
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AMERICAN LAW RECORD.

The *American Law Record* for December contains Nat. Bank *v.* Township Trustees in which it is held by the Supreme Court of the United States, that under the statutes of Ohio, in force in 1853, Township Trustees were not authorized to issue Township bonds in aid of a railroad about to be built through their township unless a similar proposition to issue bonds by the county for the same purpose had been submitted to the voters of the county and had by a majority been refused. *Also* Fink Bros. & Co. *v.* Patterson, Madison & Co. in the United States Circuit Court of Virginia, in which it is held that where an insolvent debtor submits a proposition of compromise, and while the proposition is pending he carries on his business and some of his creditors obtain payment in full, while others accept the proposition that in such case equity has jurisdiction, on a bill filed to appoint a receiver and to take possession of the firms assets and administer them for the benefit of the creditors, and this can be done without having obtained judgments. C. B. & Q. R. R. Co. *v.* Skupa, Supreme Court of Nebraska in which it is held that the vender of real estate cannot maintain an action of forcible entry and detainer against the purchaser, in possession, for default in payment although by

the terms of the contract time is made the essence of the contract,—also North Star Boot & Shoe Co. *v.* Ladd et. al., Supreme Court of Minnesota and digests of a number of cases in the Supreme Court of Ohio.

SUPREME COURT OF CALIFORNIA.

ASSIGNMENT OF OFFICIAL'S SALARY BEFORE DUE—AGAINST PUBLIC POLICY AND VOID.—Each of certain deputies in the city clerk's office in San Francisco, early in July, 1881, delivered to the city clerk a writing which in terms acknowledged the receipt of payment of their salary for the said month of July, and the clerk thereupon delivered said writing to the auditor and received therefor value less a certain discount for having paid it in advance.

Held, that such assignment of the salary of an official before it becomes due is against public policy and void. In State Bank *v.* Hastings, 15 Wis. 78, and Bliss *v.* Lawrence, 58 N. Y. 442, the rule was adopted which is followed in this case.—*Bangs* v. *Dunn*—(McKinstry, J.)—Filed Oct. 31, 1884.

SUPREME COURT OF ILLINOIS.

Head Notes to opinions by Hon. N. L. Freeman Supreme Court Reporter.

Harry E. Holmes *v.* The City of Matton. Filed at Springfield, September 27, 1884.

1. Constitutional Law—Law exempting municipal corporations from giving appeal bond.—The act of 1879, allowing municipal corporations to appeal without giving an appeal bond, as in other cases, is not unconstitutional, as being either a local law or special legislation.

2. State—Rights of, in respect to suits—Liability for costs.—A State can not be sued without its consent, nor can its power to sue and prosecute suits in all their various stages be limited or controlled, except by its sovereign power properly exercised. It has the undoubted right to prosecute and defend all suits and maintain all legal proceedings, without cost or other restrictions.

3. Municipal Corporations—As State instrumentalities, may have same exemptions as the State.—Public municipalities, such as counties, cities, villages, towns and school districts, and all officers suing for or defending the rights of the State, or acting for or instead of the State in respect of public rights, being only instrumentalities of the State, may constitutionally be authorized to sue without the payment of costs, or conforming to all the requirements imposed by the law upon natural persons, or corporations formed for private gain.

Morris R. Locke et al. *v.* William Davison et al. Filed at Springfield, September 27, 1884.

1. County—Power to fund indebtedness or issue interest-bearing bonds to take up county orders.—A county board has no authority of law to fund county indebtedness, or issue interest-bearing bonds for money with which to take up outstanding county orders and obligations, without a vote of a majority of the legal voters of the county; and with such vote they are limited to eight per cent interest on such bonds.

2. Same—Injunction to prevent payment of interest on bonds illegally issued.—Where a county board issued bonds bearing ten per cent intereet, for $8,000, with which to liquidate outstanding county orders, the payment of interest on the same was enjoined by the Circuit Court at the suit of the tax payers of the county, and this court affirmed the decree.

3. Statute—Manner of doing an act described by, must be observed.—Where a statute points out a particular course to be pursued to effect a particular purpose, no other course can lawfully be pursued.

4. County Board—Statute defining its powers, construed.—The statute which provides that the county boards of the several counties shall have power "to manage the county funds and county business,

except as otherwise specifically provided," does not give such boards an absolute and unlimited power of management of county funds, when there is an absence of any specific provision of law to the contrary. It means no more than a power to manage the county funds and county business according to law.

5. Chancery—Affirmative relief not an answer.—On bill filed by tax payers of a county to restrain the county board from paying certain interest-bearing bonds illegally issued by that body, for money with which to liquidate outstanding county orders, the Circut Court enjoined the county board from paying interests on such bonds, but failed to decree that the principal sum should be returned, and this failure was assigned for error: *Held*, that that the decree was not erroneous in this respect, as there was no cross-bill to warrant the giving of such affirmative relief to the bondholders.

6. Same—Impossing eqitable terms in granting relief.—On bill by tax payers to restrain a county board from misappropriating county funds to the payment of interest, at ten per cent, upon bonds issued by such board in violation of the statute, in granting the relief sought it was *held*, that the rule, he who seeks equity must do equity, did not apply to the complainants, as they did not owe the debt, and that there was no error in not requiring them to pay the principal, with legal interest. Had the county sought to be relieved from the payment of the stipulated interest, the rule might have been applied.

Joseph J. Bently et al. *v.* William O'Bryant et al. Filed at Sprinfield, September 27, 1884.

1. Evidence—Judgment on distress for rent for defendant to disprove tenancy.—A judgment in favor of the defendant in a proceeding by distress, on a plea simply denying indebtedness for rent, but not putting in issue the fact of a demise, is not admissible in evidence in another suit to disprove there was tenancy between parties.

2. Former Adjudication—No bar as to matter not made an issue.—To a distress warrant the defendant pleaded that he was not indebted in manner and form as alleged in said warrant, upon which issue was taken, but filed no plea denying the demise. A verdict and judgment were given for the defendant: *Held*, that the verdict and judgment did not estop the plaintiff in another suit from asserting that the defendant was his tenant.

3. Mortgage—Presumption that a deed is not a mortgage.—Where a deed for land on its face appears to be an absolute and unconditional conveyance, and is acknowledged and delivered, the law will presume, in the absence of proof showing the contrary, that it is what it purports to be, an absolute conveyance.

4. Same—Burden of proof on question whether a deed is or not a mortgage.—where a warranty deed for land, absolute on its face, is claimed to be a mortgage only, the party alleging such a character must sustain his claim by evidence sufficiently clear and satisfactory to overcome the presumption of law that it is an absolute conveyance. Loose, indefinite and unsatisfactory evidence will not suffice.

5. Admissions—Of grantor after conveying, as against grantee.—The admissions and declarations of a grantor of land, made when the grantee is not present, can not be admitted in evidence to invalidate his deed or to affect his grantee.

Frank P. Zimm *v.* The People of the State of Illinois. Filed at Springfield September 27, 1884.

1. Evidence—Declaration of a third person in hearing of defendant.—On the trial of a policeman for an assault and battery, it appeared that the defendant had arrested a boy without warrant, for jumping upon a passing freight train of cars, and that the boy's brother having heard of the arrest, with a third person came up at a rapid gait to the officer, when an altercation between the three ensued, the third person acting in concert with the older

brother, during which the officer struck the latter with a "billy," which was the battery complained of. A witness who was present at the time of the difficulty was asked, "What, if anything, did such other person say to the older brother in the presence and hearing of the officer, at that time?" which the court refused to allow the witness to answer. *Held*, that the court erred in not allowing the witness to answer the question.

2. Practice—Error in excluding evidence, and in instructions, will not always reverse.—A refusal to allow a witness present at an assult and battery, to testify what a person acting in concert with the party assaulted said to the latter, in the hearing of the defendant, before the assault, although an error, is no ground for reversing a judgment of conviction, when it appears that the defendant was allowed to testify fully as to what was said and done by such person, and that his statements could not have changed the result. Nor is error in instruction a ground of reversal, if it appears that the result of the trial would have been the same if the instructions had been free from error.

ILLINOIS COURT OF APPEALS, 4TH DISTRICT.

INQUEST — JURY FEES — WHEN MORE THAN ONE DEAD BODY IS THE SUBJECT OF THE INQUEST.—A coroner's jury was summoned to hold an inquest on twenty-six dead bodies, twenty-four of whom were burned to death and two of whom came to their death by jumping from a high window to the ground. The jury consumed six days' time in holding the inquest. The statute provides that a juror's fee shall be $1 per day for such services. The language of the statute is, "The fee of each juror attending an inquest held over a dead body shall be $1 per day." The defendant in error claims to have served on twenty-six inquests and six days on each inquest, and therefore claims $156 for services. The question therefore is whether there were twenty-six inquests held or whether the whole is embraced in one inquest.

The jury returned a general verdict, which begins with the recital: "We the jury impaneled to hold an inquest over the bodies of the victims of the fire at the Institute of the Immaculate Conception at Belleville, Ill., on the night of January the 5th, 1884, etc." They also rendered a separate verdict as to each of the victims.

Held, that the intention of the statute is that this was a single inquest on a number of dead bodies. "A thing within the intention is within the statute, though not within the letter, and a thing within the letter is not within the statute unless within the intention."—*County of St. Clair* v. *Bollman*—(Baker, J.)—Advance Sheets, 15 Bradwell.

FEDERAL COURTS.

STATE TAXATION OF SLEEPING CARS—INTER-STATE COMMERCE — UNCONSTITUTIONAL.—The State of Tennessee undertook to enforce the payment of a tax of $75 upon each sleeping car run on railroads within the State by the Southern Pullman Car Company. In regard to those cars which run exclusively within the limits of the State this tax is not resisted, but on cars which run on roads partly within the State of Tennessee and partly in other States it is contended that the action of the State is unconstitutional.

Held, that such enactment by the State legislature is a regulation of inter-State commerce and unconstitutional.

The language of the court is as follows:

"The conclusions reached from these considerations are, that a tax upon the running and using of sleeping cars or coaches on railroads in Tennessee, not owned by the railroads upon which they are run, or used as a privilege, is equivalent to a concession that the State may regulate it in all other respects or forbid it altogether; that consequently it is a regula-

tion of commerce among the States, when applied to such cars employed in inter-State transportation; and in that application, contrary to the constitution of the United States, and therefore null and void."—*Pullman S. C. Co.* v. *Nolan*—(Mathews, C. J.)—October Term, 1884.

MARYLAND COURT OF APPEALS.

SUIT BROUGHT BY NEXT FRIEND OF AN INFANT—RIGHT OF INFANT TO EMPLOY AN ATTORNEY AND DISMISS THE SUIT.—Plaintiff, an infant, brought an action by her next friend. Subsequently she employed an attorney and dismissed the suit. Subsequently a motion was made by her next friend to reinstate the case, which motion was denied, and from this order an appeal is taken. *Held*, that the *prochein ami* was the only person who was authorized to prosecute the suit.

She is responsible for costs and is charged with the duty of employing an attorney and protecting the interests of the infant. The latter, until she reached the age of twenty-one years, was incompetent to employ an attorney or to take any step in the suit which could bind her rights. See Greenwood *v.* Greenwood, 28 Md. 386; Bedford *v.* State, 30 Md. 200; B. & O. R. R. Co. *v.* Fitzpatrick, 36 Md. 621. Order of Superior Court is reversed. —*Wainwright*, etc., v. *Wilkinson*—(Bryan, J.)—Chi. Leg. News, Nov. 29, 1884.

SUPREME COURT OF MASSACHUSETTS.

WILL—REVOCATION BY MARRIAGE.—Susan E. Haven, an unmarried woman, made her will on May 20, 1853, devising and bequeathing all her real and personal estate to her sister who was named as executrix. On October 3, 1861, she married Thomas F. Hammond and lived with him until her death, which occurred January 18, 1883.

Her husband had no knowledge of the will until after her death. No child was born of the marriage. Soon after her death the will was presented for probate by the executrix, and probate was allowed and ordered April 3, 1883, from which order the husband appealed. *Held*, that by marriage the will was revoked and the decree of Probate Court is reversed.

The court says: "It has been well settled at common law, at least since Fors *v.* Hambling, decided in 1859, 4 Rep. 61, that the marriage of a *femme sole* revokes her will. In the case of a man it is equally well settled that marriage alone does not revoke his will, but that marriage and the birth of a child do. See 1 Jarm. on wills, 122, Warner *v.* Beach, 4 Gray 162." In this age, when the sphere of woman's legal rights is being enlarged, the question is suggested "Why make this distinction, whereby in the case of a *femme sole* marriage alone is sufficient cause for the revocation of her will, while in the case of a man both marriage and the birth of a child should be held necessary." In seems to us that marriage alone in the case of a man or woman ought to be sufficient change in the conditions and circumstances to cause a revocation of a will previously made.—*Swan* v. *Hammond*—(Colburn, J.)—Oct., 1884—Cent. L. J., Nov. 28, 1884.

AGREEMENT BETWEEN HUSBAND AND WIFE WAIVING RIGHT OF DOWER—NOT VALID.—In the settlement of the estate of L. H. Whitney deceased, the plaintiff, his widow, files a petition in the probate court asking for her dower to be set off.

It appeared that previous to the death of Mr. Whitney, an agreement had been voluntarily entered into between the petitioner and her husband whereby each agreed that they would make no claim on the estate of the other. In view of this agreement the probate court refused to grant the prayer of the petitioner and she appealed.

Held, that the disability of husband and wife to contract with each other under the common law is not removed by statute. The contract being void the ruling of the

probate court is reversed.— *Whitney* v. *Closson*—(Morton, J.)—Cent. L.J., Dec. 5, 1884.

SUPREME COURT OF NEW HAMPSHIRE.

HAY SCALES A FIXTURE—CANNOT BE TRANSFERED AS PERSONAL PROPERTY.—The owner of certain land erected thereon hay Scales and after his decease, five of his heirs gave to one Gage a bill of sale, not under seal, of five-sixths of the Scales. Gage by the same kind of instrument gave to one Russ one-half insterest in the scales. The five heirs of the original owner subsequently conveyed to Gage their five-sixths interest in the land on which the Scales were, and Russ later conveyed his interest to Dudly present plaintiff by a bill of sale, not under seal. Defendants who were agents of Gage in managing the Scales now refuse to account to plaintiff for his interest, whereupon he brings this suit.

Held, that the Hay Scales being originally a part of the real estate passed with the soil under them, not to the executor, but to the heirs of the owner, the same as a well dug and stoned by the testator would have passed to them, and their title was not divested by the classification of the executor's inventory.

The plaintiff has acquired no interest in the land by deed, devise, descent or otherwise.

The land under the Scales is the property of Mr. and Mrs. Gage.

If by the bills of sale plaintiff had become owner of one-half of the Scales, that half would occupy Gage's land under a license not authorized by Mrs. Gage. See Houston *v.* Laffee 46 N. H., 505; Taylor *v.* Gerish 59 N. H., 569; 58 N. H., 269; 2 Gray 302; 84 N. Y. 31; 13 M. & W. 838.

The opinion of subsequent owners of the land, that the Scales were not real estate, was an error of law that did not change the legal character of the property.—*Dudley* v. *Foote*—(Doe, C. J.)—Aug. 28, 1884.

PAYMENT OF DRAFT WITH FORGED ENDORSEMENT—LIABILITY OF PAYING.—Plaintiff Company sent a draft for the sum of $446 to their local agent, Craig, payable to the order of Moulton and Goodwin for the purpose of paying a loss sustained by them. Craig, instead of delivering the draft to Moulton and Goodwin forges their indorsement, deposits the draft in the defendant Bank and had the amount passed to his credit.

The draft on being returned to the payee was paid without suspicion of forgery. Subsequently the plaintiff company was compelled to pay to Moulton & Goodwin the amount of their loss to which this draft should have been applied and this action is brought against the bank which received and cashed the draft wrongfully on the forged indorsement.

Held, that the bank is liable for the amount and that plaintiff may recover.—*Star Fire Ins. Co.* v. *N. H. Nat. Bank*—(Allen, J.)—Cent. L. J. Dec. 5, 1884.

SUPREME COURT OF NEW YORK.

RAILWAY TRAVEL—EJECTING PASSENGER FROM CAR—TICKET PRODUCED AFTER THE CONDUCTOR HAS GIVEN SIGNAL.—The plaintiff, a passenger on train of defendant, had purchased a ticket before entering car, but could not find it immediately when called for by the conductor. Plaintiff, after looking for his ticket told the conductor he certainly had one and would in a short time find it or pay him the money. The conductor insisted upon the immediate production of the ticket and after the exchange of a few words in controversy pulled the bell-rope giving the signal for the train to stop. After giving the signal and before the train came to a stop plaintiff found his ticket and offered it to the conductor who refused to receive it and proceeded to eject plaintiff from the train.

This action is brought to recover damages for being so ejected. *Held*, that the failure to find the ticket at once when called upon was not equivalent to a refusal to pay his fare. The passenger is entitled to a reasonable time in which to

search for and find his ticket.—*Hays* v. *N. Y. C. R. R. Co.*—(Merwin, J.)—Alb. L. J. Dec. 13, 1884.

NEW YORK COURT OF APPEALS.

TRUST—BANK AND DEPOSITOR—FRAUDULENT APPLICATION OF DEPOSIT BY BANK.—The defendant Bank having discounted certain notes for a firm which was a depositer, with it, the firm wishing to pay the notes before maturity, gave their check for the amount to the Bank. As a matter of fact the bank had transferred the said notes to another party for value, and the check thus given by the makers for the payment of said notes was not so applied.

Subsequently the bank failed and a receiver was appointed to wind up its business. *Held*, that an order requiring the receiver to pay the notes out of the funds in his hands was properly granted; that the transaction was in the nature of a trust and the bank could not profit by its own fraud.—*People* v. *City Bank of Rochester*—N. Y. Court of Appeals.

SUPREME COURT OF PENNSYLVANIA.

CONTRACT BY INSURANCE AGENT—CONSIDERATION—PROMISE TO PROCURE INSURANCE.—Defendant undertook to procure insurance on certain property for plaintiff. Failing to do so and the plaintiff suffering loss by fire, this action is brought to recover damages. *Held*, that if the contract was with the agent in his individual capacity, no consideration having been paid, no recovery can be had. If the contract was with the Insurance Company through the defendant as agent and if the company thus agreed to insure the property, then the action should have been against the company and not the agent.—*Frauenthal* v. *Derr*—(Green, J.)—Cent. L. J. Nov. 28, 1884.

SUPREME COURT OF WISCONSIN.

PRACTICE — APPEAL FROM JUSTICE'S COURT—INCREASE OF DAMAGES.—Defendant was sued in a Justice's Court for assault and battery and the damages claimed were $200. Judgment was rendered for $25 and costs from which defendant appealed.

Upon the trial in the higher court the plaintiff moved for leave to amend the *ad damnum* clause by increasing the claim for damages to $2,000. Leave was granted against the objection of defendant and upon trial a judgment was rendered against defendant for $349. From this judgment defendant brings this appeal. *Held*, that the surety was not released by reason of the increase in the claim.

Held, that the instruction of the trial court to jury "that in determining the amount of damages *you may take into consideratian the means* of the defendant and his public position at the time of the assault as postmaster and president of the Village of Depere," was error and the case is remanded for error in this instruction.—*Hare* v. *Marsh*—(Cassoday, J.)—Filed Nov. 6, 1884.

VOLUNTARY ASSIGNMENT—RIGHT OF ASSIGNEE TO DEFEND AN ACTION AGAINST ASSIGNOR COMMENCED BEFORE THE ASSIGNMENT WAS MADE.—Plaintiff commenced an action against defendant Boorman by summons and attachment May 2, 1883. After service of process and before the time to answer, Boorman made an assignment for the benefit of creditors. After the assignment on May 19, 1883, the assignee without being substituted as defendant in the case and without leave of court, made and served in his own name a special answer traversing the facts on which the attachment was founded. Boorman filed no answer in the case, and on May 26, 1883, judgments were taken against him by default.

On August 28, 1883, Blodgett, the assignee, obtained an order from the Circuit Court substituting him as defendant in the action against Boorman.

On Dec. 28, 1883, he obtained an order

from said court allowing the special answer filed by him to stand as the answer of the assignor, and vacating the judgment entered in each of said actions, and setting aside the executions issued on said judgments.

Held, that the assignee could not without leave of court first obtained appear and answer in an action against the assignor.—*Howett* v. *Boorman, et al.*—(Taylor, J.)—Filed Nov. 6, 1884.

LEGAL HOLIDAY—ISSUE OF SUMMONS—NO COURTS OPEN FOR BUSINESS.—Where by statute the general election day is declared a legal holiday, and that no court shall be open or transact any business on that day, a Justice of the Peace having issued a summons on such holiday, *Held* that the judgment rendered in such case is not void by reason of the summons having been issued on a legal holiday. It is conceded that if the act was judicial the action would not lie, but the issuing of a summons is ministerial in its character. See Tompkins *v.* Sands, 8 Wend. 466. The issuing of a summons by a Justice of the Peace, unlike from a court of record, may be issued away from as well as at his office. In Van Vechten *v.* Paddock, 12 Johns, 178, it was *held*, that the commencement of the action which was by *capias* and was issued on Sunday was void, as such process was supposed to issue only while court was actually sitting. —*Weil* v. *Geier*—(Cole, J.)—Filed Nov. 6, 1884.

U. S. CIRCUIT COURT, N. D. ILLINOIS.

October 20, 1884.

New York Grape Sugar Company *v.* Peoria Grape Sugar Company.

Same *v.* Peoria Starch Manufacturing Company.

BILL FOR INFRINGMENT—INJUNCTION—EXPIRING PATENT—DAMAGES—JURISDICTION.—Blodgett, J.—This is a bill filed for an injunction and accounting against the defendant, by reason of the alleged infringement of three patents. The first issued June 11, 1867, the second issued September 8, 1868, and the third on the 15th of April, 1873, all of said patents being issued to J. J. Gilbert, for "improvements in the manufacture of starch," and having been, as averred by the bill, duly assigned to complainant.

Defendants move to dismiss the bill as to the first mentioned patent, on the ground of want of jurisdiction in equity, because this patent was so, near its expiration that an injunction could not have been properly granted under it.

I think a demurrer to so much of the bill as relates to the first patent referred to, would have been the better method of raising the question, but as the argument proceeded upon the right of complainant to relief in equity on this patent under the case made in the bill, I will consider only the merits of the question discussed by counsel, without reference to the mode of practice which was adopted in getting at it.

Since the decision of the Supreme Court in Root *v.* Railway Company, 105 U. S. R. 189, that equity has no jurisdiction in a suit upon an expired patent when the only relief sought is an accounting for profits and damages, the decisions at the circuit have not been uniform as to such jurisdiction in cases where the patent expires after the commencement of the suit and before decree.

In the opinion in Root *v.* Railway Company, the court cites approvingly Betts *v.* Gallias, Law Rep. 10, Eq. 393, in which Vice-Chancellor James held that he would not entertain a bill for the mere purpose of giving relief in damages for the infringement of a patent, where it had been filed so immediately before the expiration of the patent as to render it impossible to obtain an injunction.

The bill in this case, in addition to the usual charges of infringement of these three patents, states that "these several letters patent are applicable to the same

process and are so used by the defendants." It therefore seems to me that as there is no question made as to complainant's right to relief in equity as to the two later patents, and as it is charged that all these patents are used in a common process, it may be impossible to award damages for the infringement of the two later patents without also taking into consideration the value of the first patent.

I am therefore of opinion that upon the case made by the bill, it may be necessary to consider the value of all these patents to the complainant in the common process in which defendants are alleged to use them, and that it may be difficult, if not impossible, to determine their separate value or the separate profits made by defendants in their use.

The bills in these cases were filed more than three months before the expiration of the first patent, and the court can not therefore say, as was said by Vice-Chancellor James, that it is impossible to have given complainant an injunction on the oldest patent, or even to have reached a final decree on the merits before the expiration of the patent; an answer was due at the first rule day after the filing of the bill, and for aught the court can say, the case might have been brought to a hearing upon the bill and answer, and decree rendered before the expiration of the earlier patents; there was certainly time to have given notice, and argued the application for an injunction, which the court must assume, from the language of Vice-Chancellor James, there was not time to do in the case decided by him.

It seems to me, therefore, that the case made by this bill is exceptional to those which have been cited in support of the demurrer.

The motion to dismiss, as to the patent of June, 1867, is overruled.

Dent & Black and Cratty Bros., for Complainant.

Banning & Banning, and George F. Harding, for defendants.

SUPREME COURT OF THE UNITED STATES.

District of Columbia *v.* Arms.

May, 1883.

WITNESS—MIND IMPAIRED—COMPTENCY OF.

In error to the Supreme Court of the District of Columbia. The opinion states the case.

Field, J.—This was an action to recover damages for injuries received by the plaintiff's intestate, Du Bose, from a fall caused by a defective sidewalk in the city of Washington. In 1873, the board of public works of the city caused the grade of the carriageway of Thirteenth street, between F and G streets, to be lowered several feet. The distance between the curbstone of the carriageway and the line of the adjucent buildings was thirty-six feet. At the time the accident to the deceased occurred, this portion of the street —sidewalk it may be termed to designate it from the carriageway, although only a part of it is given up to foot passengers— was, for forty-eight feet north of F street, lowered in its whole width to the same grade as the carriageway. But for some distance beyond that point, only twelve feet of the sidewalk was cut down, thus leaving an abrupt descent of about two feet, at a distance of twelve feet from the curb. At this descent—from the elevated to the lowered part of the sidewalk—there were three steps, but the place was not guarded either at its side or end. Nothing was placed to warn foot passengers of the danger.

On the night of February 21, 1877, Du Bose, a contract surgeon of the United States army, while walking down Thirteenth street toward F street, fell down this descent, and striking upon his knees, received a concussion which injured his spine and produced partial paralysis, resulting in the impairment of his mind and ultimately in his death, which occurred since the trial below.

The present action was for the injury

thus sustained. He was himself a witness, and it appeared from his testimony that his mind was feeble. His statement was not always as direct and clear as would be expected from a man in the full vigor of his mind. Still it was not incoherent nor unintelligible, but evinced a full knowledge of the matter in relation to which he was testifying. A physician of the government hospital for the insane, to which the deceased was taken two years afterward, testified that he was affected with acute melancholy; that sometimes it was impossible to get a word from him; that his memory was impaired, but that he was able to make a substantially correct statement of facts which transpired before the injury took place, though from the impairment of his memory, he might leave out some important part, that there would be some confusion of ideas in his mind, and that he should not be held responsible for any criminal act. A physician of the freedmen's hospital, in which the deceased was at one time a patient after his injuries, testified to a more deranged condition of his mind, and that he was, when there in June, 1879, insane. He had attempted to commit suicide, and had stuck a fork into his neck several times. Upon this, and other testimony similar import, and the feebleness exhibited by the deceased on the stand, the counsel for the city requested the court to withdraw his testimony from the jury, on the ground that his mental faculties were so far impaired as to render him incompetent to testify as a witness. This the court refused to do, but instructed the jury that his testimony must be taken with some allowance, considering his condition of mind and his incapacity to remember all the circumstances which might throw some light on his present condition. This refusal and ruling of the court constitute the first error assigned.

The ruling of the court and its instruction to the jury were entirely correct. It is undoubtedly true that a lunatic or insane person may, from the condition of his mind, not be a competent witness. His incompetency on that ground, like incompetency for any other cause, must be passed upon by the court, and to aid its judgment, evidence of his condition is admissible. But lunacy or insanity assumes so many forms, and is so often partial in its extent, being frequently confined to particular subjects, whilst there is full intelligence on others, that the power of the court is to be exercised with the greatest caution. The books are full of cases where persons showing mental derangement on some subjects evince a high degree of intelligence and wisdom on others. The existence of partial insanity does not unfit individuals so affected for the transaction of business on all subjects, nor from giving a perfectly accurate, and lucid statement of what they have seen or heard. In a case in the Prerogative Court of Canterbury, counsel stated that partial insanity was unknown to the law of England; but the court replied that if by this was meant that the law never deems a person both sane and insane at one and the same time upon one and the same subject, the assertion was a truism; and added: "If by that position, it be meant and intended that the law of England never deems a party both sane and insane at different times upon the same subject, and both sane and insane at the same time upon different subjects, there can scarcely be a position more destitute of legal foundation, or rather there can scarcely be one more adverse to the stream and current of legal authority." Dew *v.* Clark, 3d Addams Eccl. R. 79, 94.

The general rule there is that a lunatic or a person affected with insanity is admissible as a witness if he have sufficient understanding to apprehend the obligation of an oath, and to be capable of giving a correct account of the matters which he has seen or heard in reference to the questions at issue; and whether he have that understanding is a question to be determined by the court, upon examina-

tion of the party himself, and any competent witnesses who can speak to the nature and extent of his insanity. Such was the decision of the Court of Criminal Appeal in England, in the case of Regina *v.* Hill (5th Cox's Criminal Cases), 259. There the prisoner had been convicted of manslaughter; and on the trial a witness had been admitted whose incompetency was urged on the ground of alleged insanity. He was a patient in a lunatic asylum, under the delusion that he had a number of spirits about him which were continually talking to him, but the medical superintendent testified that he was capable of giving an account of any transaction that happened before his eyes; that he had always found him so; and that it was solely with reference to the delusion about the spirits that he considered him a lunatic. The witness himself was called, and testified as follows: "I am fully aware I have a spirit, and twenty thousand of them. They are not all mine. I must inquire. I can where I am. I know which are mine. Those that ascend from my stomach and my head, and also those in my ears. I don't know how many they are. The flesh creates spirits by the palpitation of the nerves and the rheumatics. All are now in my body and around my head. They speak to me incessantly, particularly at night. That spirits are immortal, I am taught by my religion from my childhood, no matter how faith goes, all live after my death, those that belong to me and those that do not." After much more of this kind of talk he added: "They speak to me instantly; they are speaking to me now; they are not separate from me; they are around me speaking to me now; but I can't be a spirit, for I am flesh and blood. They can go in and out through walls and places which I cannot." He also stated his opinion of what it was to take an oath: "When I swear," he said, "I appeal to the Almighty. It is perjury, the breaking of a lawful oath, or taking an unlawful one; he that does it will go to hell for all eternity." He was then sworn, and gave a perfectly collected and rational account of a transaction which he declared that he had witnessed. He was in some doubt as to the day of the week on which it took place, and on cross-examination said: "These creatures insist upon it, it was Tuesday night, and I think it was Monday;" whereupon he was asked: "Is what you have told us what the spirits told you, or what you recollected without the spirits?" And he said: "No, the spirits assist me in speaking of the date, I thought it was Monday and they told me it was Christmas eve., Tuesday; but I was an eye-witness, an occular witness to the fall to the ground." The question was reserved for the opinion of the court whether this witness was competent, and after a very elaborate discussion of the subject, it was held that he was. Chief Justice Campbell said that he entertained no doubt that the rule laid down by Baron Parke, in an unreported case which had been referred to, was correct, that wherever a delusion of an insane character exists in any person who is called as a witness, it is for the judge to determine whether the person so called has a sufficient sense of religion in his mind and a sufficient understanding of the nature of an oath, and it is for the jury to decide what amount of credit they will give to his testimony.

"Various authorities," said the Chief Justice, "have been referred to, which lay down the law that a person *non compos mentis* is not an admissible witness; but in what sense is the expression *non compos mentis* employed? If a person be so to such an extent as not to understand the nature of an oath, he is not admissible. But a person subject to a considerable amount of insane delusion may yet be under the sanction of an oath and capable of giving very material evidence upon the subject-matter under consideration." And the Chief Justice added: "The proper test must always be—does the lunatic under-

stand what he is saying; and does he understand the obligation of an oath? The lunatic may be examined himself, that his state of mind may be discovered, and witnesses may be adduced to show in what state of sanity or insanity he actually is; still if he can stand the test proposed, the jury must determine all the rest." He also observed that in a lunatic asylum the patients are often the only witnesses of outrages upon themselves and others, and there would be impunity for offenses committed in such places if the only persons who can give information are not to be heard. Baron Alderson, Justice Coleridge, Baron Platt and Justice Talfourd agreed with the Chief Justice, the latter observing that, "If the proposition that a person suffering under an insane delusion cannot be a witness were maintained to the fullest extent, every man subject to the most innocent, unreal fancy would be excluded. Martin Luther believed that he had a personal conflict with the devil. Dr. Johnson was persuaded he heard his mother speak to him after death. In every case the judge must determine according to the circumstances and extent of the delusion. Unless judgment and discrimination be applied to each particular case there may be the most disastrous consequences." This case is also found in 2 Denison and Pearce's Crown Cases, 254, where Lord Campbell is reported to have said that the rule contended for would have excluded the testimony of Socrates, for he had one spirit always prompting him. The doctrine of this decision has not been overruled, that we are aware of, and it entirely disposes of the question raised here.

On the trial, a member of the metropolitan police, who saw the deceased fall on the sidewalk and went to his assistance, was asked, after testifying to the accident, whether while he was on his beat, other accidents had happened at that place. The court allowed the question against the objection of the city's counsel, for the purpose of showing the condition of the street, and the liability of other persons to fall there. The witness answered that he had seen persons stumble over there. He remembered sending home in a hack a woman who had fallen there, and had seen as many as five persons fall there.

The admission of this testimony is now urged as error, the point of the objection being that it tended to introduce collateral issues and thus mislead the jury from the matter directly in controversy. Were such the case the objection would be tenable, but no dispute was made as to these accidents, no question was raised as to the extent of the injuries received, no point was made upon them, no recovery was sought by reason of them, nor any increase of damages. They were proved simply as circumstances, which with other evidence tended to show the dangerous character of the sidewalk in its ungarded condition. The frequency of accidents at a particular place would seem to be good evidence of its dangerous character—at least it is some evidence to that effect. Persons are not wont to seek such places, and do not willingly fall into them. Here the character of the place was one of the subjects of inquiry to which the attention of the defendant was called by the nature of the action and the pleadings, and he should have been prepared to show its real character in the face of any proof bearing on that subject.

Those accidents also tended to show that the dangerous character of the locality was a matter likely to be brought to the attention of the city authorities.

In Quinlan *v.* City of Utica, 11 Hun, 217, which was before the Supreme Court of New York, in an action to recover damages for injuries sustained by the plaintiff through the neglect of the city to repair its sidewalk, he was allowed to show that while it was out of repair other persons had slipped and fallen on the walk where he was injured. It was objected that the testimony presented new issues

which the defendant could not be prepared to meet, but the court said: "In one sense every item of testimony material to the main issue introduces a new issue; that is to say, it calls for a reply. In no other sense did the testimony in question make a new issue. Its only importance was that it bore upon the main issue, and all legitimate testimony bearing upon that issue the defendant was required to be prepared for." This case was affirmed by the Court of Appeals of New York, all the judges concurring, except one, who was absent. 74 N. Y. 603.

In an action against the city of Chicago, to recover damages resulting from the death of a person who in the night stepped off an approach to a bridge while it was swinging around to enable a vessel to pass, and was drowned—it being alleged that the accident happened by reason of the neglect of the city to supply sufficient lights to enable persons to avoid such dangers—the Supreme Court of Illinois held that it was competent for the plaintiff to prove that another person had under the same circumstances met with a similar accident. City of Chicago *v.* Powers, 42 Ill. 168. To the objection that the evidence was inadmissible, the court said: "The action was based upon the negligence of the city in failing to keep the bridge properly lighted. If another person had met with a similar fate at the same place and from a like cause, it would tend to show a knowledge on the part of the city that there was inattention on the part of their agents having charge of the bridge, and that they had failed to provide proper means for the protection of persons crossing on the bridge. As it tended to prove this fact it was admissible; and if the appellants had desired to guard against its improper application by the jury, they should have asked an instruction limiting it to its legitimate purpose."

Other cases to the same general purport might be cited. See Augusta *v.* Hafers, 61 Ga. 48; House *v.* Metcalf, 27 Conn. 630; Calkins *v.* Hartford, 33 id. 57; Darling *v.* Westmoreland, 52 N. H. 401; Hill *v.* Portland and Rochester R. Co., 55 Me. 439; Kent *v.* Lincoln, 32 Vt. 591; City *v.* Delphi *v.* Lowery, 74 Ind. 520. The above however are sufficient to sustain the action of the court below in admitting the testimony to which objection was taken.

Judgment affirmed.

WISCONSIN SUPREME COURT.

May 31, 1883.

Briffitt v. *State of Wisconsin.*

PROSECUTION FOR THE SALE OF INTOXICATING LIQUOR WITHOUT LICENSE TO SELL.—The opinion states the case. Defendant below took a writ of error to review a judgment of conviction.

J. H. Rogers, for plaintiff in error.

L. F. Frisby, attorney-general, for the State.

Orton, J. The complaint before the justice was that the defendant had sold "intoxicating liquors" without first having obtained a license therefor. The case was appealed to and finally tried in the Circuit Court. The only question really presented by the exceptions, either to the evidence or to the charge of the court to the jury, is whether proof that the defendant had sold beer was sufficient proof that he had sold malt or intoxicating liquor. In ruling upon a question of evidence the court said, "I suppose everybody knows what is meant by beer." When the question was asked whether malt is used in ordinary beer, the court said: "I do not think it is necessary. I think a man must be almost a drivelling idiot who does not know what beer is. I do not think it necessary to prove what it is." The charge of the court on the same subject was substantially of the same import. It was proved that the defendant had sold "beer." There was some proof tending to show that the beer sold had an exhilarating effect, and that it was such beer as was brewed in large breweries of the State. But such evidence scarcely

rendered the above ruling immaterial, if it was necessary to prove that the beer sold was either malt or intoxicating liquor, because it was clearly insufficient for that purpose. The statute (§ 9, ch. 332, Laws 1882) makes the proof of the sale of any malt liquor, proof of the sale of intoxicating liquor. The case, so far as the evidence is concerned, is outside of this statute; for it was neither charged nor proved that malt liquor was sold by name, and it may as well be assumed, and could have been as easily proved, that it was intoxicating liquor, as malt liquor. The question therefore remains, without the aid of the statute, whether it is implied in the word "beer" that it was either malt or intoxicating. The statute of New York was the selling without license of any "strong or spirituous liquors," or any wines, etc.

In Nevin *v.* Ladue, 3 Denio, 437, the question was whether ale, porter, and strong beer were included in the term "strong liqnors," and it was held, without proof, that they were so included. The learned chancellor wrote an opinion giving one of the most learned essays upon the composition and use of malt liquors ever written. The subject is treated scientifically, philosophically, historically and geographically, and the opinion is well worthy of reference and reading; but it is not necessary to reproduce it here further than to say that it is shown that malt liquor, as ale or beer, was made and used as a beverage before the time of Herodotus, and has continued to be made and used all along down the ages, and in various countries, until the present time. At the present time we all know that this malt liquor, under the generic name of "beer," is made and used in most of European countries, and in our own, and is a common beverage. As long as laws for licensing the sale of intoxicating liquors have existed, brandy, whisky, gin, rum and other alcoholic liquids have been held to be intoxicating liquors *per se;* and why? Simply because it is within the common knowledge and ordinary understanding that they are intoxicating liquors. By this rule of common knowledge courts take judicial notice that certain things are *verities*, without proof; as in Chambers *v.* George, 5 Litt. 335, the circulating medium in popular acceptation was held to mean "currency of the State," and in Lampton *v.* Haggard, 3 Monr. 149, the circulating medium was held to mean "Kentucky currency;" and in Jones *v.* Overstreet, 4 Monr. 547, the word "money" was held to mean paper currency. If a witness on the stand were asked whether whisky is intoxicating, he would be apt to smile as at a joke, and an intelligent witness, when asked the same in relation to beer, might smile with equal reason. Words in contracts and laws are to be understood in their plain, ordinary and popular sense, unless they are technical, local or provincial, or their meaning is modified by the usage of trade. 1 Greenl. Ev., § 278.

When the general or primary meaning of a word is once established by such common usage and general acceptation, we do not require evidence of its meaning by the testimony of witnesses, but look for its definition in the dictionary. Whisky, according to Webster, is "a spirit distilled from grain;" and beer, according to the same authority, is "a fermented liquor made from any malted grain, with hops and other bitter flavoring matter." It is true that, to a limited extent, there are other kinds of beer, or of liquor called beer, such as small beer, spruce beer, ginger beer, etc.; but such definitions are placed as remote and special, and not primary or general. So it may be said of other substances having a common name and meaning, such as milk or tea. Milk, according to Webster, is "a white fluid secreted by female mammals for the nourishment of their young." There are other kinds of milk, however, such as "the white juice of plants," which is the remote definition; or milk in the

cocoanut, or that in the milky-way. Tea is defined to be "leaves of a shrub or small tree of the genus *Thea* or *Camellia*. The shrub is a native of China and Japan." There are other kinds of tea, such as sage tea and cammomile tea, etc. The latter are the restricted uses of the word. When asked to take a drink of milk or cup of tea, it would not be necessary to prove what it meant. Why is it more necessary to prove what is meant by a glass or drink of beer? When beer is called for at the bar, in a saloon or hotel, the bartender would know at once, from the common use of the word, that strong beer—a spirituous or intoxicating beer—was wanted; and if any other kind was wanted, the word would be qualified, and the particular kind would be named, as root beer or small beer, etc. When therefore the word "beer" is used in court by a witness, the court will take judicial notice that it means a malt and an intoxicating liquor, or such meaning will be a presumption of fact, and in the meaning of the word itself there will be *prima facie* proof that it is malt or intoxicating liquor that is meant.

When the witnesses in this case testified that the defendant sold to them beer, the prosecution had sufficiently proved that he had sold to them a malt and intoxicating liquor, for both qualities are implied in the word "beer." This as a logical conclusion and principle of law would seem to be well established by common reason, and we think it would be difficult to find a single good reason against it. As to decisions and authorities upon the question, it must be confessed it would seem that those which require proof that beer, or the liquor sold by that name, is intoxicating, have at least the weight of numbers. But there are many authorities, of the very highest judicial source, and based, as we think, on far the better reason, which hold the doctrine we have indicated. These we feel bound to follow.

In Nevin *v.* Ladue, 3 Denio, 43, the question was one of law whether "ale" was a "strong and spirituous liquor" within the statute, and it was held that it was, from its long use and well-known qualities, and from common knowledge, and its definition in Webster.

In Parker *v.* Wheelock, 3 Parker Crim. 9, it is said in the opinion: "The word 'beer,' in its ordinary sense, denotes a beverage which is intoxicating, and is within the fair meaning of the words 'strong or spirituous,' as used in the statutes, and it was held that it was incumbent upon the defendant to show that the word was used in a restricted or qualified sense, such as to denote *root* beer, *molasses* beer, etc., and this is unquestionably the correct rule in such cases.

In Commissioners of Excise, etc., *v.* Taylor, 21 N. Y. 173, it was held that "strong beer" was within the statute.

In Rau *v.* People, 63 N. Y. 277, it is held that "strong beer" was within the statute.

In State *v.* Goyette, 11 R. I. 592, it is held that the court should take judicial cognizance, and without evidence, that "lager beer" is a malt liquor, and it is said in the opinion by Chief Justice Durfee: "Lager beer is, and has been for many years a familiar beverage in this country. Its constituents are enumerated not only in books of science, but in popular encyclopædias. It is a malt liquor of the lighter sort, and differs from ordinary beers and ales, not so much in its ingredients, as in its processes of fermentation. The government might almost as well be required to prove that gin, or whisky, or brandy is a strong liquor, as to prove that lager beer is a malt liquor."

In Massachusetts, "strong beer and lager beer" are to be deemed to be intoxicating by statute, and that is conclusive. Commonwealth *v.* Anthes, 12 Gray, 29.

Many authorities to the same effect are referred to in the above cases, and many more might be cited. It is useless to cite

or comment upon that large class of authorities which hold the other way, for we disapprove of them, and follow these, founded as we think in the better reason. The court is indebted for the above citations to the able brief of the learned counsel of the State, and on the other hand the learned counsel of the defendant is entitled to great credit for the ability and industry shown in the brief of his side of the case. The learned counsel of the defendant complains of the peculiar manner and language of the court in ruling upon this question, and cites authorities that even the improper manner of a judge, which influences or prejudices the minds of the jury, may be assigned for error. But those authorities are only to the effect that a manner or emphasis or form of expression which may be reasonably interpreted to express a wrong opinion as to the law or facts, or to express an opinion of a fact which should be left wholly to the jury, may be assigned as error, the same as words of the same effect.

The rulings of the learned judge in this case as to this question were clearly correct, and if his peculiar manner gave them force by emphasis, that was not only proper but commendable. If it is not a fault but a high merit in a judge to make his rulings clear and positive, so as not to be misunderstood, and the only question for this court is whether such rulings were correct as matters of law. His manners we have nothing to do with. That is a matter entirely personal, except when expressing error. We think the rulings of the Circuit Court on this qnestion were clearly correct.

The learned counsel of the defendant claims that the judgment or sentence is void, because in default of payment of the fine and costs the defendant is to stand committed not to exceed sixty days, and cites chapter 332, Laws 1882, which provides, that in lieu of a fine, the defendant may be punished by imprisonment not to exceed sixty days, nor less than twenty. The sentence is strictly according to section 4633, Revised Statutes.

The judgment of the Circuit Court is affirmed.

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Porter see Canby.
Potsdam, see Rochester
Preston H. K. Weis.
Pipestone F. C. Dean.
Redwood Falls. see New Ulm
Red Lake Fs. see Crookston.
Red Wing, Henry Johns
Rochester. H. C. Butler.
Rosemary, see Breckenridge.
Rushford. see Chatfield
Sleepy Eye, see New Ulm.
Springfield see New Ulm.
Spring Grove, see Caledonia
Spring Valley, see Chatfield
Stephen see Warren.
St. Vincent, see Warren.
Saint Paul.

JAMES N. GRANGER.

St Cloud, L. A. Evans.
Stillwater. Frank H. Ewing
Sherburne, see Fairmount
St. Peter, Ladd & Stone.
Thompson see Duluth.
Two Harbors see Duluth.
Warren, George Wetherby.
Wabasha, see Chatfield
Wilmar, see Benson
Wykoff. see Chatfield
Winona, Gary & Morey.
Woodstock, see Pipestone.
Worthington. L. M. Lange.
Zumbrota, see Red Wing

MISSISSIPPI.

Aberdeen, see Okolona.
Ackerman. see Starkville.
Australia see Rosedale.
Batesville, see Water Valley
Beauregard, see Hazlehurst
Boonville see Oko ona.
Brookhaven. A. C. McNair.
Byhalia, see Holly Springs
Canton. W. H. Powell.
Carthage. O. A. Luckett.
Carrollton, see Greenwood.
Chulahoma, see Holly Sprgs
Crystal Spgs. see Hazlehurst,
Coffeeville, see Water Valley
Chester, see Starkville.
Columbus. see Starkville
Concordia, see Rosedale.
Cornersville see Hollysprings
Fayette see Natchez.
Forest, see Carthage.
Greenville, E. N. Thomas.
Greenwood | A. McC. Kimbrough.
Hazlehurst. Joe Purver
Holly Springs. | W. M. Strickland.
Hudsonville see Holly Springs
Houston see Oko ona.
Iuka. E. S. Candler.
Johnsonville. see Greenwood
Kosciusko. John T. Butt.
Lamar, see Holly Springs
Lexington. see Greenwood.
Louisville, see Starkville,
Michigan City, see Holly Springs
Mound Ldg, see Rosedale.
Natchez James G. Leach.
Oxford see Water Valley.
Oko ona Orr & Orr.
Pittsboro. see Water Valley.
Philadelphia see Cathage.
Ripley. J. A. Kimbrough & Bro
Rolling Fork, see Greenville.
Rosedale Charles Scott.
Starkville. Dennis & Chiles.
Sturvis. see Starkville,
Tupelo. see Oko ona.
Vicksburg, helton & Crutcher
Waterford. see Holly Springs
Waterford. see Holly Springs
Water Valley. W. S. Chapman
Walthall. see Starkville.
West Point. see Starkville.
Wesson. see Hazlehurst
Winona see Greenwood.
Woodville. C. P. Nelson.
Yazoo City, see Greenville.

MISSOURI.

Anthus see Stanberry.
Albany, Wallace Hubbard.
Arbela: see Memphis.
Ash Grove. see Springfield.
Arcola, see Greenfield.
Aullville. see Lexington.
Aurora see Pierce City.
Aurora Springs see Tuscumbia
Alton, see West Plains.
Avalon. see Chillicothe.
Barnard see Maryville.
Bear Creek. see Stockton.
Bethany. Skinner & Winslow.
Benton. see Pleasant Hill.
Bird's Point, see Bloomfield.
Bloomfield. Bedford & Fort.
Blythedale. see Bethany.
Bowling Green. } see New London.
Black Oak, see Breckenridge.
Brookline. see Springfield.
Boonville, | Walker & Johnston.
Brookfield, see Linneus.
Browning. see Linneus.
Brumley. see Tuscumbia.
Buckingham. see Linneus.
Bunceton. see Boonville.
Burlington Jc. see Maryville.
Cabool, see Houston.
Caplinger's Mills see Stockton
Cane Hill. see Stockton.
Cainsville, see Bethany
Carrollton, L. K. Kinsey.
Carthage, A. L. Thomas.
Catawba. see Breckenridge.
Cainsville. see Princeton
Cameron J. F. Harwood.
Canton. see Monticello.
Centreton, | see Jefferson City.
Centreview. see Holden.
Cedarville. see Greenfield.
Charlestown. see Tuscumbia.
Chillicothe. John N. Boyd.
Chilhowee, see Holden
Clearmont see Maryville.
Clinton, S. E. Price
Clyde, see Maryville.
Cole Camp, see Versailles
Columbus. see Holden.
Commerce. see Bloomfield.
Cottonwood. see Princeton
Conception see Stanberry.
Cuba Ellis G. Evans.
Darlington. see Stanberry.
Dawsonville, see Maryville.
De Witt see Carrollton.
Lexter, see Poplar Bluff.
Downing, see Memphis.
Dadeville. see Greenfield.
Eagleville. see Bethany.
East Lynn see Pleasant Hill.
Eldorado Springs, see Stockton
Eldeon, see Tuscumbia.
Easton see Jefferson City
Emporia, see Canton.
Everton. see Greenfield.
Evona. see Stanberry.
Fairfax, see Rockport.

Fa rfield, see Warsaw.
Fairpo , see Mays ille.
Florence, see Versailles.
Frederickto , see Marble Hill.
Gallatin, Wm. C. Gillihan. Sam'l Ambrosius.
Golden City see Lamar.
Gainsville, see Wes Plains.
Granger, see Memphis.
Graham see Maryville.
Grandby. ee Neosho.
Greenfield H. Merrill.
Greensburg, see Memphis.
Greenville. see Marble Hill.
Hale see Carrollton
Hamilton see Breckenridge.
Hannibal, . e Anderson.
Hertford see Unionville
Herm tage, See Buffalo.
Hiawatha see Hamilton.
Holden W. C. Smith.
Hopkins, see Maryville.
Huntsville, John R Christian. W. T. Austin.
Lanthrope Lamar.
Iberia. see Tuscumbia
Independence, C. S. Crysler
Island City see Stanberry.
Jamesport see Gallatin.
Jameson see Gallatin.
Jerico. see Stockton.
Jefferson City, Hamilton & Fisher.
Joplin, see Carthage.
Kansas City,
HARMON BELL
Kingsville, see Holden.
Kings Point, see Greenfield.
King City see Stanberry.
Knobnoster, see Sedalia.
Keener. see Poplar Bluff.
Lancaster, see Memphis.
La Belle see Montecello.
La Grange see Monticello.
Lamar. John B. Cole.
Lathrop, see Cameron.
Lebanon, See Buffalo.
Lewistown. see Montecello.
Lexington J. D. Shumalter.
Liberal. see Lamar.
Licking, see Houston.
Lincoln. see Warsaw.
Linn Creek see Tuscumbia
Lineville, see Princeton
Linneus John . Wilcox.
Lockwood, see Greenfield.
Lurso. see Memphis.
Marble Hill. M. R. Smith.
Marquand. see Marble Hill.
Marionville, see Pierce City
Martinstown. see Unionville
Memphis. A. H. Smith.
Mendota, see Unionville.
Miami, see Carrollton.
Milford. see Lamar.
Mill Grove, see Princeton
Milton, see Rockport.
Monticello, Burnett & Marchand.
Montrose see Appleton City.
Monroe City. see Hannibal.
Modena. see Princeton
Montevallo, see Nevada
McFall, see Stanberry.
Mt Vernon. see Pierce City.
Mill Springs, see Poplar Bluff
Mocksville see Chillicothe.
Neosho see Lamar.
Nettleton see Breckenridge.
Nevada. J. T. Hruseve.
Newark see Eureka.
New London. see Hannibal.
New Madrid. see Bloomfield
Newtonia see Neosho.
Norborne. see Carrollton.
Odessa. see Lexington.
Omaha. see Unionville
Orange City. see Jeffersion City
Osborn. ee Maysville
Otterville. see Boonville.
Palestine, see Boonville.
Pamyra see Hannibal.
Philadelphia, see Hannibal.
Pattensburg. see Gallatin.
Piedmont, see Marble Hill.
Pilot Grove. see Boonville.
Pittsville, see Hocden.
Plattsburg, see Cameron.
Pleasant Hill, Henry Cordell.
Pleasant Mt. see Tuscumbia
Plymouth. see Carrollton.
Peldmont. see Poplar Bluff.
Pleasonton. see Princeton
Pleasant Green, see Boonville.
Potter, see Marble Hill.
Princeton Ira B. Hyde, H. G. Orton.
Proctor. see Tuscumbia.
Purdy see Pierce City.
Ravanna, see Princeton
Republic see Springfield.
Richland. see Tuscumbia.
Ridgeway. see Bethany.
Ritchey. see Neosho.
Rockport W. M. Jobe
Rock Prairie, see Greenfield.
Rockville. see Butler
Rocky Ridge, see Tuscumbia
Rolla. see Cuba.
Salem. see Cuba.
Sandhill. see Memphis.
Sarcoxie see Pierce City.
Saverton see Hannibal.
Seneca. see Neosho.
Sedalia, see Warsaw
Sheldon, see Nevada
Skidmore see Maryville.
Spring Garden see Tuscumbia.
Strawberry, Ed. S. Aleshire.
Steelville see Cuba
Stewartsville. H. S. Buck.
Stockton. James T Farris.
Sylvania, see Greenfield.
St. Elizabeth, see Tuscumbia.
St. Joseph, Lancaster, Thomas & James.

St. Louis, 506 Olive St.,

C. P. ELLER.

Strafford see Springfield.
Turkio see Rockport.
Tipton see Versailles.
Trenton. R. A. De Bolt.
Tuscumbia. T. S. Robinson.
Unionville and all towns in Putnam co. A. D. Christy
Verona. see Pierce City.
Utica. see Chillicothe.
Van Horn. see Carrollton.
Versailles Jo n D. Bohling.
Wakanda, see Carrollton,
Virginia City, see Nevada
Virginia City, see Nevada
Walker, see Nevada
Walnut City, see Butler.
Warrensburg, see Hocden.
Warsaw, I. C. Chapman.
Walker, see Nevada
Waverly, see Lexington.
Webb City see Carthage.
Westboro, see Rockport.
West Plains J. H. Maxey.
Wheeling. see Cliffton he.
Whitmoreville, see Memphis.
Wimsville. see Poplar Bluff
Will amstown.see Monticello

MONTANA TERRITORY.

Benton, see Helena.
Bozeman, J. J. Davis.
Butte, see Helena.
Gallatin. see Bozeman.
Gardiner, see Bozeman.
Helena, Erastus D. Edgerton.
Livingston. Bozeman.
Missoula. Frank H. Woody.

NEBRASKA.

Adams. See Beatrice
Alma, see Orleans
Albion, Geo. M. Montgomery.
Arago, see Humboldt.
Ara. ahoe, see Beaver City.
Ayr. ee Hastings.
Atkinson see O'Neill City.
Ashland, see Wahoo
Bancroft Humbolt.
Beatrice. R. S. Bibb.
Blair. see Omaha.
Beaver City, B. Roberts
Bennet. see Lincoln
Bloomington see Red Cloud
Blue Springs. See Beatrice.
Brownlaw. see York.
Battier Sta. see Pawnee City
Cambridge see Beaver City.
Cedar Rapids, see Albion.
Cheney, see Lincoln
Cincinnati see Pawnee City.
Clear Creek see Wahoo
Clay Centre, see Harvard
Columbus, McAllister Bros.
Cort and, See Beatrice.
Crawford Tekamah
Custer, see Loup City.
Dakota City, H. D. Rogers.
Decatur. see Tekamah.
Dunbar, see Nebraska City.
Duncan, see Columbus.
Edgar, see Nelson.
Elm Creek, see Kearney.
Emerson, see Ponca.
Ewing, see O'Neill City.
Exter, see Geneva.
Fairmont. see Geneva.
Falls City, see Humboldt.
Fairfield. see Harvard
Forth see Lincoln
Geneva. Walter V. Fifield.
Gibbon. see Kearney.
Gould, ee Elm Creek.
Goth e bury, see Plum Creek.
Grafton. ee Geneva.
Grand Island and all towns in Breckenridge
Hanen, see Hastings.
Hardy. see Nelson.
Hartington. see Ponca.
Harvard R. A. Moger
Hastings, Dilworth, Smith & Dilworth.
Homer ille see Plum Creek
Hubbard see Ponca.
Humboldt, E A ker.
Humphry see Columbus.
Inman, see O'Neill City.
Jackson, see Ponca.
Junita. see Hastings.
Kearney, C. M. Wright.
Keene w ood Hastings.
Kent. see Ord.
Loup City, C. H. E. Heath.
Lincoln see Humboldt
Liberty, See Beatrice.
Lincoln M. L. Easterday.
Lost Creek, see Columbus.
Lyons, see Tekamah.
Martinsburg see Ponca.
Mission Creek, see Pawnee City.
Nebraska City. Albert S. Cole.
Nelson. W. A. Bergstresser
New Castle. see Ponca.
North Platte Wm. Neville.
North Loup, see Ord.
Ord. Coffin & lements.
Oakland. see Tekamah.
Ogallala, see North Platte.
Orleans. L. H. Kent
Oxford. see Orleans
Omaha.

STOW, HAMMOND & DAY.

See Card on First Page.

O'Neill City H. M. Uttley.
Overton, see Plum Creek.
Oxford see Beaver City.
Palmyra. see Nebraska City.
Papillion, see Omaha
Pawnee City. J. L. Edwards.
Phelps Centre. Dilworth & Dravo.
Platte Centre, see Columbus.
Plattsmouth, see Weeping Water.
Plum Creek, A. S. Baldwin.
Raymond. see Lincoln
Red Cloud and all towns in Webster and Franklin cos. Case & McNeny.
Roca, see Lincoln
Rulo see Humboldt.
Salem see Humboldt.
Shelton, see Kearney.
Sidney. see North Platte.
Stella see Humboldt
St. Edwards, see Albion.
St Helena. see Ponca
Stuart see O'Neill City.
Superior see Nelson.
Syracuse see Nebraska City
Sargent See Loup City.
Scotia, see Ord.
Taylor, see Ord.
Table Rock see Pawnee City
Talmadge, see Nebraska City
Thurman, E. W. Peterson.
Unadilla see Nebraska City.
Verdon, see Humboldt
Wachee Y rk.
Water oo, see Omaha.
Wasefield see Ponca.
Waverly, see Lincoln
Valparaiso, see Wahoo
Weston, see Wahoo
Wahoo, E. S. Merritt
Weeping Water, H. D. Travis
Westerville. see Loup City.
West Union, see Loup City.
Wilber. Hastings & McGrotle
Wilsonville see Beaver City.
Wymore, See Beatrice.
York, France & Harlan.

NEW HAMPSHIRE.

Concord, Leach & Stevens.
Fishersville, see Concord.
Franklin Falls, E. G Leach.
Franklin, see Franklin Falls.
Manchester and all towns in Hillsborough Co. Osgood & Prescott.
Mitchell see Concord.
Warner see Concord.

NEW YORK.

Albany, WILLIAM J. HILLIS.
Albion see Medina.
Arcade, see Warsaw.
Attica, see Warsaw.
Bath on Hudson, see Albany.
Bath, McMaster & Parkhurst.
Binghamton Wm. M. Crosby Jr.
Bloomingdale. see Plattsburg
Baldwinsville see Syracuse.
Brewerton see Syracuse.
Broadalbin. see Johnstown
Brooklyn. WM. W. BUTCHER.
Buffalo. CLINTON & CLARK.
Camillus see Syracuse.
Cambridge, see Whitehall.
Castile, see Warsaw.
Caughdenoy see Amsterdam.
Canandaigua. H. M. Field
Cayuga Lake see Ithaca.
Cohoes see Albany.
Corning A. S. Kendall.
De Witt, see Syracuse.
Dryden, see Ithaca.
Duanesburgh see Schenectady
Ellicottsville. see Salamanca.
Ellenville, see Kingston.
Elmira Denton & Dowell
Fayetteville see Syracuse.
Fonda see Amsterdam
Fort Plain. see Amsterdam.
Franklinville, see Salamanca
Fulton, see Oswego.
Gaines ille. see Warsaw.
Granville, see Whitehall.
Greenwich, see Whitehall.
Ithaca. see Schenectady
Gloversville, see Johnstown.
Goshen, see Middletown.
Greenbush, see Albany.
Groton, see Ithaca
Holley, see Medina.
Hornellsville Blakes & Page
Horseheads, see Elmira.
Ithaca, A. A. Hungerford.
Johnstown, Philip Keck
Kingston and all towns in Ulster Co. Wm. T. Holt.
Lansingburg, see Troy.
Little Falls, see Salamanca
Liverpool, see Syracuse.
Lockport. Myron L. Burrell.
Lewiston see Lockport
Lyndonville see Medina.
Lyons, see Wolcott
Malone and all towns H. A. Taylor.
Frank lin C
Manlius. see Syracuse.
Medina. Stanley E. Filkins.
Middleport see Medina.
Mexico, see Oswego.
Middletown, Charles G. Dill.
Niskayuna. ee Schenecta.
Niagara Falls. see Lockport.
North Tonawanda. see Johnstown.
Olean, see Salamanca.

One d.

EDWIN J. BROWN.

Ontario, see Wolcott
Oswego, W. J. Smith.
Palmyra, see Wolcott
Perry, see Warsaw.
Pike, see Warsaw.
Phelps see Canandaigua.
Phoenix. see Oswego.
Port Henry, see Plattsburg.
Port Jervis, see Middletown.
Portville. see Salamanca
Poughkeepsie. J. H. Millard
Pulaski. see Oswego.
Red Creek. see Wolcott
Rochester M. H. McMath.
Rome. see Utica.
Rondout. see Kingston.
Rotterdam. ee Schenectady
Sageville. see Johnstown.
Saratoga A. J Lyman.
Salem, see Whitehall.
Saugerties. see Kingston.
Schenectady. A. A. De Remer.
Schoghticoke. see Troy.
Skaneateles see Syracuse.
Staten sland. see Brooklyn.
Syracuse, Wm. P. Gannon.
Tonawanda, see Lockport

Savannah, see Wolcott
Sodus, see Wolcott
Tarrytown and all towns in W.Ch esterCo. } L. T. Y ale
Ulysses, see Ithaca.
Union, see Binghamton.
UTICA, all town in Oneida Co } SUTTON & MOREHOU
Warsaw. Aug. Harrington.
Watertown a l towns i Jefferson Co } E. R. BROWN.
W ilfie d see James'own.
Wa. f Troy see Allany.
Whi. hall and all t wnsin Wash Co. } J. Sanford Potter.
Whit ey s Point, } Binghamptcn.
Williams n. see Wolcott.
W lcott. William R le
Wyoming, see Warsaw.

NEW JERSEY.

Asbury Park. See Eatontown
Belleville, see ewark.
Be vider . see Phil lp b rg
B ackwoodtown, see Camden
Bloomfiel , see Newark.
Bloo mingdale, see Paterson
Bloomsbury, see Flemi gton
B and rock ee Somerv lle
Boonton, see Morristown.
Cam e i Herbert A. Drake.
Ches'er. see Mo ristown.
Ch..to , s e Fl mington
Cranbury, see New Brun wick.
Dover, see Mor ristown.
Eatontown. James Steen.
Elmer see Salem.
Freehold. see Eatontown.
Fr ight wn. see Fle lington
Fleming on. E. R. B lock
Glen Gardner, s. Fleming on
Glou ester City, see Camden.
H ghtstown, see Trent n.
Hackettstown. see Ph'psb'g.
Haddonfield, see Camden.
Ho ewell, see Tren on.
Irvington. see Newark.
Jamesburg, see N w Bruns wck.
Keyport. see Eatontown.
Lambertvill . s e Fl mington
Little Falls. see Pa er on.
Long Branch see Eatontown
Madison, see Morristown.
Morristown. Aur. W. Cutler.
Matawan see Eatontown.
Middleb sh, see New Br nsw.ck.
M ltown, see NewBrunswick.
Mil ord, see Flemington
Millstone, see New Bruns ick.
New Brunswick James H. Van Cleef.
Newark. M. I. DeWitt.
Ocean Grove. see Eatontown
Passaic, see Paterson.
Paterson. Albert A. Wilcox.
Pennsgrove, see Salem.
Pennington, see Trenton.
Perth Amboy, see New Brunswick.
Phil'ipsburg Wm. M. Davis.
Plainfield, see Somerville
Prince on. ee Tren on.
Raritan, se Somervil e.
Ro kaway, see Mo ristown.
Red Bank see Eatontown.
Salem, William T. Hilliard.
So. Amboy, s e New Brunswick.
Somerville, Bartine & Griggs
Trent n J hn A. fee .
Washington see P ll t sburg
White Hous , see S merville
Woodbridge, see New Brunswick.
Woodstown. see Salem.
Yonkers } ROBERT P. GETTY.
Getty Sqr. } all towns in Westchester Co.

NEW MEXICO.

Albuquerque. W. C. Hazledine.
Las Vegas, Columbus Moise.
Mora, see Las Vegas.
Santa Fe, and any town in Territory except Albuquerque. Wm. Breeden

NEVADA.

Belmont. W. N. Granger.
Candelaria. E. W. Taylor.
Eure a, Frank X. Mu phy.
Gedd s see E reka.
Hamilto . see Eureka.
Newark. se Eureka.
Palisade, see Eureka.
Ruby Hill see Eureka.

NORTH CAROLINA

Asheville Davidson & Martin
Cha el Hi l. see Hillsboro.
Charlotte. } H. C. Jones.
} R. D. Johnston.
Danbury see Wins on
ur a , see Raleigh.
Elizabe'htown, see Wilmington.
Godsbo o. J. W. Bryan.
Graham see Hillsboro.
Greens oro. see Hillsboro.
Halifax. see Raleigh.
Hen erso , see Raleigh.
Hillsboro. Jno W Graham.
High point. see Winston
Kernersville, see Winston
Kinston, see Goldsboro.
Kenansville, see Goldsboro.
Lexington, see Winston
Louisburg E. W. Timberlake
Mount Airy, see Winston
Oxford. see Raleigh.
Pittsbor . ee Raleigh
Raleigh Gray & Stamps.
Roxbo , see Hillsboro.
Snow Hill, see Goldsboro.
Smithfield, see Raleigh.
S. Wa hington, see Wilmington.
Thomasville, ee Winston.
Weldon, see Raleigh.
Wilmin t n, McRee & Strange.
Winston, Eugene F. Gray
Yadkinsville, see Winston
Yanceyvil e. see Hills oro.

OHIO.

Ab rdeen, see Ripley.
Ada, see Lima.
Akron. Green & Robinso
Andover see Jefferson.
Ansonia, see Greenville.
Archbald, see Wauseon.
Arcanum, e Greenville.
Ashtabula see Jefferson.
Austintown see Youngstown
Batavia, R. J. Bancroft.
Barnesville, see Belmire.
Bellaire, Gallaher & Woodbridge.
Bellefont in E. J. Bowenstine
Bellevue, see Norwalk.
Belmore, see Ottawa.
Berea see Wellington.
Berlin Heights. see Sandusky
Beverly. see Marietta.
Delphre, see Marietta
Bloomville. see Sandusky
Bowling Green and all towns in Wood Co. Pillars & Pilars.
Bielmore, see Ottawa.
Bluffton see Lima.
Brilliant, see Steubenville.
Bridgeport. see Belmare.
Bryan. Thomas Emery.
Bucyrus, see Crestline.
Cadiz see Carrollton.
Caldwell, Charles H. Reed.
Carrollton, W. L. Handley.
Canal Winchester, see Columbus
Canal Dover see New Philla.
Castalia see Sandusky
Catawba. see Springfield
Charleston. see Springfield
Cincinnati, 20, 1 & 2 Temple
DAVIDSON, CONWAY & GABLER
Cleveland, 27 Blackstone Bldg., STEWART & JOHNSTON.
Clyde, see Fremont.
Columbus, Artz & Mooney.
Columbus Grove, see Ottawa.
Conneaut. see Jefferson.
Dayton Boltin & Shauck.
Defiance, Henry Hardy.
DeGraff see De efontaine.
De phos B. J. Brotherton.
De ta, see Wauseon.
Dennison, see New Philla.
Dupont, see Ottawa

Dublin. see C lumbus
Dresden. see Z nesville.
Dunkirk. see Ke ton.
East Liverpool see Wellsville
Eaton Campbe l & Gl more.
Edenton, see Batavia.
Elyria D. J. Nye Bros. Atty
Farmer's entre, see Defiance.
El o e. see Fremont.
Fayette, see Wauseon.
Fayettevil e. see Ripley.
Felicit , see Batavia.
Fincastle. see Ripley.
Findlay Henry Brown.
Forest. see Kenton.
Fostoria, see Tiffin.
Fremont. { R. P & H. S. Buckland
Ft. Jennings see Ottawa
Galion, see Crestline.
Geneva see Jefferson.
Georgetown. see Ripley.
Glandorf see Ottawa.
Goshen. see Batavia
Green Spring , see Tiffin.
Greenville, John Reily Knox.
Hamden Jc. see Wellston.
Hamilton, Edga A Belden
Hicksville. see Defiance.
Higginsport. see Ripley.
Hiramsburg See Caldwell.
Huron , see Sandusky
Hubbard. see Niles
Jackson see Wellston.
Jefferson, Talcott Bros.
Kalida see Ottawa
Kenton T. B Buck
LaGrange, see Wellington.
Lancaster, H. C. Drinkle.
La Rue, see Kenton.
Letonia. see Wellsville.
Lima, Makenzie & Robb.
London, Webster & Porter.
Lowell see Marietta.
Leipsic, see Ottawa
Lorain, see Elyria
Lowellville, Youngstown
Lyons. see Wauseon.
Mansfield Manue May.
Middletown see Hamilton.
Milan, see Norwalk.
Marietta Ferry, see Bellaire
Macksburg see Marietta.
Marion, Chamberlain & Hamilton,
Matamor s see Marietta.
Millbury, see Toledo.
Minerva, see Canton
Middletown. see Hamilton
Mineral Ridge, see Niles
Monroeville, see Norwalk.
Moscow, see Batavia.
Mount Orab, see Ripley
Mt. Carmel, see Batavia.
Mt. Pleasant. see Stubenville.
Mt Victory, see Kenton.
Napoleon Martin Knupp.
Newcomerstown, see Coshocton
New London, see Wellington
New Lima, see Youngstown
New Philadelphia A. L. Neeley.
Norland, see Youngstown
Petersburg, see Youngstown
New Madison, see Greenville
North Amherst see Elyria
New Carlisle, see Springfield
New Lisbon, see Wellsville.
Ney. see Defiance.
Niles. J. N. Cowdery.
Oak Harbor, see Fremont.
Oberlin see Wellington.
Ottawa. W. C. G. Krauss
Oxford. see Hamilton
Plainfield. see Coshocton.
Perrysburg, see Bowling Green
emberville see Bowling Gr.
Piqua see Troy.
Pandora, see Ottawa
Port Clinton. see Fremont.
Portsmouth and any town in Scioto Co. Moore & Newman.
Ripley. Will m H. Sly.
Shanesville, see New Philla
Republic see Tiffin.
Rock Creek, see efferson.
Salem see Wellsville.
Sandusky. Arthur Phinney
Seven Mile, see Hamilton.
Sherwood see Defiance.
Sidney McKinney & Wicoff.
Smithfield. see Stubenville.
Stubenville. P. P. Lewis.
South Toledo see Toledo.
Spencerville, see Lima.
Springfield, Keifer & White

St. Clairsville see Bellaire.
Swanton see Wauseon.
Sylvania, see Toledo.
The Bend see Defiance.
Tiffin, Royer & Rickenbaugh.
Toledo. HENRY N. BUNKER.
Townsend, see Norwalk.
Troy W. R. McKinney.
Tremont, see Springfield
Tontogany, ee Bowling Gr.
Toronto, se Steubenville.
Upper Sandusky W. F Pool.
Urichsville, see New Philla
Van Wert. H. Kemper.
Versailles, se Greenville.
Vermilion, see Sandusky
Vienna, see Niles
Wapakoneta. F. C. Layton.
Warsaw see Coshocton.
Wauseon. H. H. & T. F. Ham
Wa en e Niles
Waterville, see Columbus
Weston, see Bowling Green
Wellsville, P. C. Young.
Wellston and all towns in Jackson o. } E.B.Bingham
West Jefferson, see London
West Liberty see Bellefont'n
Weiser City. See Caldwell.
Williamsburg, see Batavia,
Woodsfield. See Caldwell.
Woodville, see Fremont,
Wooster L. Q. Jeffries.
Worthington, see Columbus
Xenia T. L. Magruder.
Youngstown. Rogers & Roger

OREGON.

Ashland. See Jacksonville.
Grant's Pass see Jacksonville
Jacksonville B. F Dowell.
Leeners , see Salem.
Phoenix See Jacksonville.
Portland. Joseph Simon.
Salem, Shaw & Brnett.
Silverton, see Salem,
Stayton see Salem.
Turner, see Salem.

PENNSYLVANIA.

Allegheny City, see Pittsburgh.
Allentown, and all towns in Lehigh Co., } Fred G. W Runk.
Altoona, Neff & Hicks.
Apollo see Kittanning.
Ashland, see Pottsville
Athens. see Towanda
Archbald see Scranton.
Bangor, See Easton.
Bath. See Easton.
Bethlehem. See Easton.
Beaumont see Tunkhannock
Benezette see Ridgeway
Berwick. see Bloomsburg
Beaver, see New Brighton
Beaver Falls s. New Brighton
Berneville, see Reading
Bedford. John M. Reynolds
Bellefonte. Alexander & Bower.
Bidaboro, see Reading
Blairsville see Indiana.
Bloomsburg, C. G. Barkley.
Bossburg see Tioga
Blain see New Bloomfield
Boyertown, see Reading
Bristol, see Dyestown.
Broad Top. see Huntingdon.
Brookwayville, see Punxsutawney.
Brookville, see Punxsutawney.
Butler. A. T. Black.
Carbondale see Scranton.
Carlisle S. Hepburn Jr.
Cassville see Huntingdon.
Catasauqua see Allentown.
Caledonia see Ridgeway
Cattawissa. see Bloomsburg
Calensburg, see Clarion
Canton, see Towanda.
Carrolton, see Ebensburg
Chambersburg J.M.McDowell
Christiana, see Lancaster.
Centralia. see Bloomsburg
Centre Hall. see Bellefonte
Chester. Orlando Harvey.
Clarion Wilson & Jenks.
Clearfield, see Du Bois.
Clarendon, see Warren
Columbia. see Lancaster
Columbus. see Warren
Conn uenee. see Somerset.
Conlay, see Allentown.
Covington. see Tioga.
Curwinsville, see DuBois.

Darlington, see New Brighton
Dauphin, see Harrisburg
Doylestown, { Lewis B. Thompson
Duncannan, s. New Bloom'fld
East Brady, see Clarion
Ebensburg, Joan ... Scanlan
Edinboro see Corry.
Edenburg, see Clarion
Ephrata, see Lancaster
Erie, Theo. A. Lamo.
Espy, see Bloomsburg
Everett, see Bedford.
Franklin, see Oil City.
Factoryville see Tunkhannock
Fairview, see Butler
Foxburg, see Clarion
Freemansburg, see Easton.
Fryburg, see Clarion
Freeport, see Kittanning.
Freedom, see New Brighton
Galitzi n, see Ebensburg
Green Castle, } see Chambersburg
Gettysburg, D. McConaughy.
Girard, see Erie
Glendon, See Easton.
Greenville see Sandy Lake.
Hanover see York.
Hollidaysburg, s e Altoona.
Harrisburg, Francis Jordan.
Hamburg, see Reading
Harrisville, see Butler
Hazleton, see Wilkes-Barre.
Hellertown, See Easton.
Hemlock, see Ebensburg
Hokendauqua, see Allentown
Howard, see Bellefonte.
Indiana, H K. Sloan.
Jersey Shore see Wm'sport
Johnstown, see Ebensburg.
Karns City, see Butler
Kersey's, see Ridgeway
Kingston, see Wilkes-Barre.
Kittanning, J. H. McClain.
Kutztown, see Reading.
Lancaster, D. G. Eshleman.
Latrobe see Greensburg.
Laceyville see Tunkhannock
Landisburg, s. New Bloomfld
Lansford, see Mauch Chunk.
Lehighton, see Mauch Chunk
Lebanon W. M. Derr.
Leechburg, see Kittanning.
Lewisburg, J. T. Baker.
Liverpool, see New Bloomfld
Lights reet, see Bloomsburg
Lititz, see Lancaster
Lock Haven, J. R. Youngman.
Locust Gap, see Shamokin
Macungie, see Allentown.
Mansfield, see Tioga.
Marion, see Indiana
Mahanoy City see Pottsville
Manheim, see Lancaster
Marietta, see Lancaster
Martinsburg, see Altoona.
Mauch Chunk, Craig & Loose
McKeesport, see Pittsburgh
Meadville and all other towns } J.B.Compton in Crawford Co.
Mercer, see Sandy Lake.
Mercersburg, see Chambersburg
Mehoopany, see Tunkhannock
Meshoppen see Tunkhannock
Meyersdale, see Somerset.
Monroeton, see Towanda
Mt. Carmel, see Shamokin
Milheim, see Bellefonte.
Millerstown, see Butler
Millersville, see Lancaster
Moscow, see Scranton
Mt. Union, see Huntingdon.
Muncy, see Williamsport.
Nazareth, See Easton
New Brighton, G. L. Eberhart
New Castle, A. L. Hazen.
New Bloomfield, { Chas J. T. McIntire.
New town, see Doylestown.
Oil City, Wilmot Heard.
Oliphant see Scranton.
Orbisonia see Huntingdon.
Oxford, Theo. K. Stubbs.
Parker City, see Kittanning.
Parrysville, see Mauch Chunk
Penfield see DuBois.
Petersburg see Huntingdon.
Phillipsburg, see Bellefonte
Pittston, see Wilkes-Barre.
Plymouth, see Wilket-Barre.
Pittsburgh, Magnus Pfaum
Philadelphia, 251 South 4th St. SAMUEL WAGNER.

Portland, See Easton.
Pottsville, Christopher Little
Punxsutawney, | Winslow & Calderwood.
Renova, J. H. Ferguson.
Reading, Garrett B. Stevens
Reynoldsville, | see Punxsutawney.
Ridgeway, G. A. Rathbun.
Rockwood, see Somerset.
Rochester see New Brighton
Saltsburg, see Indiana.
Scranton, T. R. Hughes.
Selin's Grove and all towns in Snyder Co. | A. W. & N. J. Potter.
Shamokin Addison G. Marr.
Sharon, see Sandy Lake.
Shenandoah, see Pottsville.
Shippenville, see Clarion
Sheffield, see Indiana.
Shrewsbury, see York.
Smicksburg, see Indiana.
Smith's Ferry, see N. Brighton.
Somerset, Henry F. Scheel.
South Easton, See Easton.
So. Bethlehem, See Easton.
Spartansburg, see Corry.
Strattanville, see Clarion
Strasburg, see Lancaster
St Marys, see Ridgeway
Sugar Grove, see Warren
Summit Hill, { see Mauch Chunk
Tamaqua, see Pottsville
Tidioute see Warren
Tremont, see Pottsville
Trenton, see Shamokin
Tioga, F. E. Smith.
Titusville, See Meadville.
Towanda all towns in Bradford Co. } R. A. Mercur
Troy, see Towanda
Tunkhannock, | Wm. M. Platt & Sons.
Tyrone, see Altoona.
Union City see Corry.
Ursina, see Somerset.
Warren, { Johnson, Lindsey & Parmelee.
Warrior's Mark, } see Huntington.
Waterford see Corry.
Watsontown, see Sunbury
Waynesboro, see Chambersburg
W. Bridgewater s. N. Brighton
Weatherly, see Mauch Chunk
Weissport see Mauch Chunk.
Wilcox, see Ridgeway
Wilkes Barre, W. Pe Witt.
Williamsport, H T. Ames.
Wellsboro see Tioga.
West Middlesex see Sharon.
Wrightsville, see York.
York, A N. Green
Youngsville, see Warren

RHODE ISLAND.

Bristol, see Providence.
E Greenwich, see Providence
Kingston, see Providence.
Newport, see Providence.
Pawtucket, see Providence.
Providence, { W. W. & S. T. Douglas.
Warren, see Providence.
Westerly, see Providence.
Woonsocket, see Providence

SOUTH CAROLINA.

Abbeville, Perrin & Cothran.
Aiken see Winnsboro.
Beaufort, W. I. Verdier.
Blackstock see Winnsboro.
Blythewood, see Winnsboro.
Branchville, see Orangeburg
Chappells, see Newberry.
Charleston, | Smythe, Bruns & Lee.
Darlington, E. Keith Dargan
Edgefield see Newberry.
Columbia, Ryon & Barron.
Greenwood, see Abbeville.
Greenville Isaac M. Bryan.
Hartsville, see Beaufort.
Lexington see Newberry.
Laurens see Newberry.
Monticello, see Winnsboro.
Mt. Pleasant see Charleston.
Ninety Six, see Abbeville.
Newberry, Geo. S. Mower.
Orangeburg, | Malcom I. Browning.
Prosperity, see Newberry.
Port Royal, see Beaufort.
Ridgeway, see Winnsboro
Shelton, see Winnsboro.
St. Matthews, see Orangeburg
Rowesville, see Orangeburg.
Spartanburg, J. S. Thomson.
Summerville, see Charleston.
Sumter Blanding & Blanding
Troy, see Abbeville.
Union see Newberry.
Winnsboro, J. H. Ion.
Woodward see Winnsboro.
Walterboro, see Winsboro.
White Oak, see Winsboro

TENNESSEE.

Bristol, Chas. R. Vance.
Blountsville, see Bristol.
Brownsville, E. J. & J. C. Read
Chattanooga, H. M. Wiltse.
Clinton, see Knoxville.
Columbia E. C. McDowell.
Dandridge, see Brownsville.
Dandridge see Knoxville.
Dresden, Joan McGlothlin.
Dyersburg, S. R. Latta.
Elizabethton, see Bristol.
Finlay, see Dyersburg
Fowlkes, see Dyer burg
Franklin, see Columbia.
Gardner, see Dresden.
Greenfield see Dresden.
Gleason, see Dresden.
Henderson see Jackson.
Jackson, McClorry & Bond.
Jonesboro, see Bristol.
Jenks see Kingston.
Kingston and all towns in Roane Co. } W. H. Dietz.
Knoxville, H. H. Taylor.
Lewisburg, see Columbia.
Loudon see Knoxville.
Madisonville see Knoxville.
Martin, see Dresden.
Maryville, Will. A. McTeer.
Maynardsville see Knoxville
Medlin, see Jackson.
Medon, see Jackson.
Memphis Myers & Speed.
Morristown see Knoxville.
Murfreesboro C. A. Sheafe.
Nashville T. M. Hurst.
Newbern, see Dyersburg
Parmersville, see Dresden.
Linson see Jackson.
Rockwood see Kingston.
Rogersville see Bristol.
Sevierville see Knoxville.
Shelbyville see Dresden.
Springfield, Jno. W. Judd.
Stanton Den, see Brownsville
Taylorsville, see Bristol.
Troy, J. G. Smith.
Woodville, see Brownsville
Wellwood, see Brownsville.

TEXAS.

Abbott, see Hillsboro.
Abilene, J. S. E. Cockrell.
Athens, M. F. Richardson.
Alto see Nacogdoches.
Alvarado, see Cleburne.
Atlanta see Texarkana.
Austin Walton & Hill.
Axtell, see Waco.
Baird, see Sweetwater.
Big Spring, see Sweetwater.
Bells see Denison
Belton, D. L. Russell.
Bonham, Wm. A. Bramlette.
Boston, see Texarkana.
Burnett see San Saba.
Brady see San Saba.
Brownsboro see Athens.
Brownwood see San Saba.
Buffalo Gap see Abilene.
Carthage see Marshall.
Castorville, see San Antonio
Centre City, see Hamilton.
Chandler, see Athens.
Clarendon, see Vernon.
Comanche E. L. Shropshire.
Clebune Brown Ramsey & Crane.
Colorado, see Sweetwater.
Cortland, see Sweetwater.
Crowford see Waco.
Creedmore, see Austin
Cuero see Gonzalez.
Dallas Kerby & McCoy.
Dangerfield see Texarkana.
Denton Marshall Fulton.
Doan's, see Vernon.
Dodd City, See Bonham.
DrippingSprings, see S. Marcus
Du Pre, see San Marcus.
Eddy, see Waco.
Fairview, See Floresville.
Fincastle, see Athens.
Fickville, see Austin
Fatonia see Gonzalez.
Fredericksburg, See Mason.
Floresville, B. F. Ballard.
Fort Worth, Robert McCart.
Galveston any town in Galveston Co } Chas L. Cleveland
Gatesville and all towns in Coryell Co. } Baines & Crisman.
Gordonsville, see Denison.
Glenrose J. B. Earp.
Gonzalez, Harwood & Harwood
Goshen see Athens.
Granbury see Glenrose.
Halletsville see Gonzalez.
Hamilton Georgie Freeman
Hillsboro, Tarlton, Jordan Tarlton.
Hemphill, see Nacogdoches.
Hico see Hamilton.
Honey Grove, See Bonham.
Houston Sinclair La Inferro.
Howe see Denison.
Hubbard City, see Hillsboro.
Hunter, see San Marcus.
Iredell, see Glenrose.
Itasca, see Hillsboro.
Jacksonville, see Nacogdoches.
Jefferson see Marshall
Jonesboro see Gatesville.
Junction City, see Mason.
Kaufman, see Dallas.
Kotula see San Antonio.
Kyle, see San Marcus.
La Grange, | Phelps & Haidusek
Lampasas see San Saba.
Lavernia, See Floresville.
Linden, see Texarkana.
Lano, see San Saba.
Lockhart see Gonzalez.
Lodonia, See Bonham.
Longview, see Marshall.
Lulin, see Gonzalez.
Lorena, see Waco
Malakoff, see Athens.
Martindale see San Marcus.
Marshall, Alex. Pope.
Mason, Henry M. Holmes.
Matarville, see Waco.
Manor, see Austin
McGregor, see Waco.
McKinney see Dallas.
Melrose see Nacogdoches.
Menardville, see Mason.
Meridian see Cleburne.
Merkle, see Sweetwater.
Mexia see Groesbeck.
Moody, see Waco
Mobeetie, see Vernon.
Mt Pleasant, see Texarkana.
Murchinson see Athens.
Nacogdoches, Robt. M. Morris
Paint Rock, see Abilene.
Palestine, Thos B. Greenwood
Paris, See Bonham.
Pearsall see San Antonio.
Pilot Point, see Denton.
Pittsburg see Texarkana.
Pleasanton, See Floresville.
Pottsboro see Denison.
Runnel's City, see Abilene.
Rusk, see Nacogdoches
Sweetwater, Cox & Posey.
San Augustine, see Nacogdoches.
San Marcos Fisher & Rose.
San Saba, Yoe & Harris.
Savoy, See Bonham.
Seymour, see Vernon.
Sherman see Denison.
Stoekdale, See Floresville.
Sutherland Spgs see Flat'e
Summit see Waco
Terrell see Dallas.
Thornton see Groesbeck.
The Grove, see Gatesville.
Texarkana and Todd & Miller Co. Arkansas. } Hudgins.
The Cove, see Gatesville
Turnersville, see Gatesville.
Union, See Floresville.
Vernon, { Gordon & Eggleston W. L. Gordon. J. C. Eggleston.
Wichita Falls, see Vernon.
Walnut see Glenrose.
Waco E. A. McKenney.
West, see Waco.
Wellsville, see Austin
Whitesboro, see Denison.

Whitney, see Hillsboro.
Williams Ranch, see San Saba
Woolde, see San Antonio.

UTAH.

Corinne, see Ogden.
Corden, Ransford Smith.
Logan, see Ogden.
Tooelecy, see Salt Lake City.
Salt Lake City, Hoge & Burmester.
Stockton, see Salt Lake City.

VIRGINIA.

Abbott, John A. I. Lee.
Abingdon, Va., see Bristol, Tenn.
Alexandria, Samuel G. Brent.
Berkeley, see Norfolk.
Berryville see Winchester.
Bridgewater, s. Harrisonburg
Broadway, see Harrisonburg
Charlottesville, Micajah Woods.
Clifton Forge see Covington
Charlestown, see Winchester
Columbia, see Louisa C. H.
Covington, James Bowyer.
Culpeper, John F. Dixey.
Danville, Green & Miller.
Dayton, see Harrisonburg
Estellville, Va., see Bristol Tenn.
Eisenburg, see Woodstock.
Front Royal, S. S. Turner.
Goodson, Va., see Bristol, Tenn.
Gordonsville, see Louisa, C.H
Green, C.H., see Louisa C.H.
Harrisonburg Ed. S. Conrad.
Howardsville s. Charlottesville N. C.
Lebanon, see Woodstock.
Leesburg, J. H. Alexander
Lexington, Letcher & Letcher.
Liberty, see Abbott.
Louisa, C. H., Wm E. Bibb
Low-Moor, see Covington,
Luray, see Front Royal.
Madison C. H., F. H. Hill.
Maurertown, see Woodstock.
Middletown, see Winchester.
Mt. Jackson, see Woodstock
Mt Crawford, s. Harrisonburg
New Castle, see Abbotts.
New Market see Woodstock
Newport, see Abbott.
Norfolk, W. H. Burroughs, J. J. Burroughs.
Orange, C.H., see Louisa, C.H
Palmyra see Louisa C.H.
Pearisburg, see Abbott.
Port Republic s. Harrisonburg
Portsmouth, see Norfolk.
Richmond, JAMES LYONS
Roanoke, see Lincastle
Salem D. B. Strouse.
Scottsville, see Charlottesville N. C.
Staunton, see Charlottesville N. C.
Standardsvill, see Charlottesville N. C.
Simmonsville, see Abbott.
Staunton, W. E. Craig.
Strasburg, see Woodstock.
Timberville, see Harrisonburg
Warrenton, Thos. Smith.
Winchester and all other towns in Frederick Co. Richard Parker.
Woodstock, Walton & Walton
Wytheville, Jas. A. Walker

W. VIRGINIA.

Barboursville, see Huntington
Grafton, J. T. McGraw.
Guyandotte see Huntington.
Hamlin see Huntington.
Middlebourne, see Sisterville
Milton, see Huntington.
Moundsville, see Wheeling
Parkersburg, D. H. Leonard.
Raven Rock, see Sisterville.
Sisterville, J. H. McCoy.
St. Mary's, see Sisterville.
Spencer, A. B. Wells.
Wheeling, J. J. Woods.
Wellsburg, see Wheeling

WISCONSIN.

Abbotsford, see Medford
Ahnapee, see Kewaunee.
Arcadia, Higbee & Comstock
Amherst, see Stevens Point.
Antigo, see Wausau.
Antigo, and all towns in Shawano and Langlade Co's Latta & Trever.
Appleton, Collins & Blackwell.
Argyle, see Darlington.
Ashland, see Bayfield.
Augusta, see Eau Claire.
Baraboo, see LaCrosse.
Eau Claire, see Burlington
Bayfield, A. M. Warden.
Berlin, M. L. Kimball.
Belmont, see Darlington.
Beloit, see Janesville.
Bloomington, see Lancaster
Blair, see Arcadia
Boardman, see New Richmond
Boscobel, John D. Wilson.
Brillion, see Chilton.
Brothertown see Chilton.
Burlington, E. Merton.
Cable, see Bayfield.
Carlton, see Kewaunee.
Cascade, see Kewaunee.
Cassville, see Lancaster
Chelsea, see Medford
Chandler see Hudson.
Charlestown see Chilton.
Chilton, J. E. McMullen.
Clear Lake, see Hudson.
Clinton, see Janesville.
Colby, see Wausau.
Colfax, see Menomonie.
Cumberland, see Hudson.
Darlington D. S. Rose.
DePere see Green Bay.
DeSoto see Viroqua.
Desoto, Wis., See Lansing, Ia
Dorchester, see Medford
Eau Claire, E. E. Doolittle.
Edgerton, see Janesville
Erin Prairie, see New Richmond.
Evansville see Janesville
Fancy Creek, see Eau Claire
Ft. Howard, see Green Bay.
Fifield, see Medford
Fennimore see Lancaster
Galesville, see Arcadia
Glen Haven, see Lancaster
Glendale see Sparta.
Greenwood, see Nellsville.
Hazel Green see Lancaster
Hammond see Hudson.
Hartford see Bend.
Haywood, see Hudson.
Hortonville, see Appleton.
Humbird see Nellsville.
Independence, see Arcadia
Janesville, Norcross & Dunwiddie.
Jewett Mills, see New Richmond.
Kankakee, see Appleton.
Kaukauna see Appleton
Kendall, see Sparta.
Kewaunee, Timlin & Manseau
Kewanskum, see West Bend.
Kiel, see Manitowoc
Knapp, see Menomonie.
LaCrosse, Hughes & Miller.
Lancaster Burnell & Watkins
Ledvard, see Appleton
Lodi see Madison.
London, see Madison.
Madison, Edward P. Vilas:
Maiden see Medford
Manitowoc, G. G. Sedgwick
Mapleworks, see Nellsville
Mauston, Windsor & Veeder.
Mazomia, see Madison.
Menesha see Oshkosh.
Menomonie, Geo. Shafer.
Merrill, see Wausau.
Medford, J. K. Parish
Milton, see Janesville.
Milwaukee, A. G. WEISSERT
Montello, S. A. Pease.
Mosinee, see Wausau.
Monfort, see Lancaster
Muscoda, W. S. Canning.
Mondovi, see Eau Claire.
Nelsville, R. F. Koontz.
Neenah, see Oshkosh.
Newberry, see West Bend.
New Holstein, see Chilton.
New London, M. B. Patchen.
Nicolet, see Green Bay.
Norwalk, see Sparta.
Oakdale see Sparta.
Onalaska, see LaCrosse.
Ontario see Viroqua.
Oregon, see Madison.
Omro see Oshkosh.
Oshkosh, M. Sees Hooper.
Oxford, see Janesville
Northport, see New London.
Paris, see Manitowoc
New Richmond, S. N. Hawkins
Royalton, see New London.
Rusk see Menomonie.
Sand Creek, see Menomonie.
Plover see Stevens Point.
Plymouth, M. D. L. Fuller
Littville see Lancaster
Phillips, see Medford
Portage, J. B. Taylor.
Racine, A. Cary Judd.
Random Lake see Plymouth.
Reedsville, see Manitowoc
Rhinelander, see Wausau.
Ripon, see Fond du Lac.
River Falls see Hudson.
Roxbury, see Medford
Rochester see Burlington
Shawano, see Antigo.
Schleisingerville, see W. Bend
Seymour, see Appleton.
Sheboygan see Plymouth.
Sheboygan Falls, see Plymouth.
Scandinburg, see Darlington.
Somerset, see New Richmond
Spencer, see Wausau.
Star Prairie, see New Richmond.
Stockbridge, see Chilton
Sturgeon Bay, F. J. Hamilton
Tomah see Sparta.
Two Rivers, see Manitowoc
Tunnel City see Sparta.
Union Grove, see Racine.
Waterford, see Burlington
Waupun, see Fond du Lac.
Wausau, Silverthorn, Hurley & Ryan
Wauzeka see New London.
West Bend, Paul A. Weil.
West Salem, see LaCrosse.
Westboro, see Medford
Whitehall see Arcadia
Wilton see Sparta
Winneconne, see Oshkosh.

WASHINGTON TER.

Chehalis, see Olympia.
Cheney, M. G. Barney.
Colfax, see Dayton.
Dayton, J. K. Rutherford.
Kalama, see Olympia.
La Conner see Seattle.
Medical Lake, see Cheney.
Montazeno, see Olympia.
Oakland, see Olympia.
Oysterville, see Olympia.
Olympia, Ballard & McFadden.
Port Townsend, see Seattle.
Pomeroy, see Dayton.
Seattle, H. H. Lewis.
Spokane Falls, see Cheney.
Sprague, see Cheney.
Tacoma, see Seattle.
Waitsburg, see Dayton.
Whatcom, see Seattle.

WYOMING TERRITORY.

Cheyenne, C. N. Potter.
Evanston, see Laramie.
Green River City see Laramie
Laramie City, M. C. Brown.
Rawlins, see Laramie.

DOMINION OF CANADA

PROVINCE OF ONTARIO.

Alexandria see Cornwall.
Berlinheim, see Chatham.
Bothwell, see Chatham.
Belleville, see Kingston.
Berlin, see Guelph.
Brockville, see Kingston
Chatham, Robinson, Wilson & Bell.
Cornwall, and all other towns in Dundas Glengary and Stormont counties. Leitch & Pringle.
Elora, see Guelph.
Ferrus, see Guelph.
Fort Erie, see St. Cathrine.
Galt, see Guelph.
Guelph, Macdonald & Macdonald.
Hamilton Edward Furlon
Harriston, see Guelph.
Hogsback, see Cornwall.
Kingston E. H. Smyth.
London, Parke, Mills & Purdom.
Morrisburg, see Cornwall.
Nappanee see Kingston.
Niagara Falls, see St. Catharines
Ottawa, Martin O'Gara, Q.C Edward P. Hemon
Palmerston, see Guelph.
Perth, see Kingston.
Port Colborn see St Cathar's
Riddletown, see Chatham.
St. Catharines, A. G. Brown
Thorold, see St. Catharines
Thamesville see Chatham.
Wales see Cornwall.
Wallaceburg, see Chatham.
Welland, see St. Catharines
Toronto, 39 Adelaide St., JAMES PEARSON
MANITOBA.
Winnipeg, PATTERSON & BAKER.

NEW FOUNDLAND.

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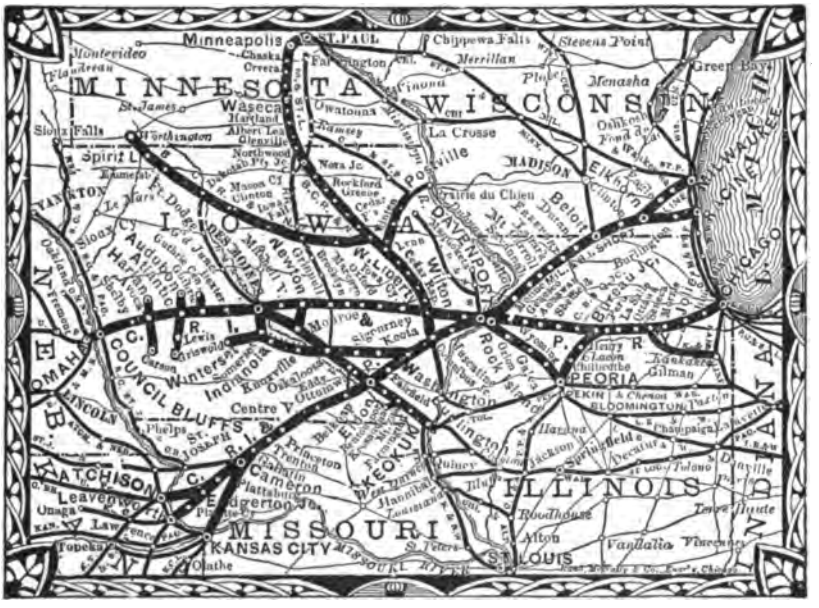

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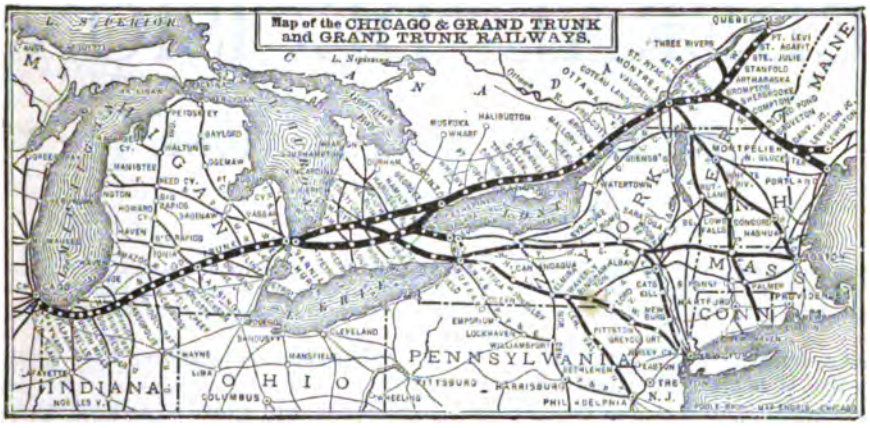

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McDonough, see Griffin.
Minnie, see Alapaha.
Montezuma, see Americus.
Monticello, See Macon.
Morgan, J. J. Beck.
Newton, See Morgan.
Newman, O. McClendon.
Norwood, see Warrenton.
Ocilla, see Alapaha.
Oglethorpe, see Americus.
Pearson, see Alapaha.
Perry, See Macon.
Preston, see Americus.
Rome, Hamilton Yancey.
Savannah, H. C. Cunningham
Smithville, see Americus.
Sparta, see Crawfordsville.
Springfield, See Savannah.
Statesborough, See Savannah
Stillboro, see Cartersville.
Talbotton, See Butler.
Thomaston, See Butler.
Summerville, See Rome.
Thompson, See Augusta.
Tifton, see Alapaha.
Waynsboro, See Augusta.
Willicoochee, see Alapaha.

IDAHO.

Caldwell, Charles H. Reed.
Boise City, Jonas W. Brown.
Bellevue, see Hailey.
Bullion, see Hailey.
Hailey, Kingsbury & McGowan.
Ketchum, see Hailey.
Shoshone, see Hailey.

ILLINOIS.

Aledo, John C. Pepper.
Altamont, see Effingham.
Alton, see Edwardsville.
Amboy, Wm. E. Ives & Son.
Apple River, see Galena.
Arcadia, see Jacksonville.
Arcola, see Tuscola.
Arenzville, See Virginia.
Arthur, See Sullivan.
Ashland, See Virginia.
Ashley, See Nashville.
Ashton, See Dixon.
Atlanta, see Lincoln.
Atwood, see Tuscola.
Ava, See Carbondale.
Barnett, See Litchfield.
Barry, see Pittsfield
Baylis, See Pittsfield
Beardstown, See Virginia.
Beason, see Lincoln.
Belvidere, C. B. Dean.
Bement, see Monticello.
Benton, F. M. Youngblood.
Brimfield, See Peoria.
Bethany, See Sullivan.
Bloomington, | Wm. Hayes Beaver
Blue Mound, see Taylorville.
Breese, see Carlyle.

Bradford, See Toulon.
Brighton, See Carlinville.
Brushy Fork, see Tuscola.
Buckley, See Watseka
Bunker Hill, See Carlinville.
Bushnell, { A. E. Barnes. G. S. Doughty.
Butler, See Litchfield
Buda, see Princeton
Cable, See Aledo.
Cairo, George Fisher.
Camargo, see Tuscola.
Cambridge, See Genesee
Campbell, See Murphysboro.
Camp Point, See Quincy.
Carlinville, Thomas Rinaker.
Carmi, Crebs & Berry.
Cartersville, See Carbondale.
Carthage, see Nauvo.
Casey, see Marshall.o
Castleton, See Toulon.
Catlin, See Danville.
Caldonia Sta, see Belvidere
Capron, see Belvidere
Castleton, see Toulon
Cerro Gordo, see Monticello.
Champaign, Thos. J. Smith.
Chapin, see Jacksonville.
Chatsworth, See Pontiac.
Chandlerville, See Virginia.
Chebanse, See Watseka.
Chenoa, See Bloomington.
Chillicothe, See Peoria.
Christopher, See Benton.
Colfax, See Bloomington.

Chicago, 175 Dearborn st. Dent, Black & Cratty Bros.

Christman, see Paris.
Cisco, see Monticello.
Clay City, E. McGilton.
Clayton, See Quincy.
Clement, see Carlyle.
Clinton, Oscar E. Harris.
Coleta, See Sterling.
Collinsville, see Edwardsville.
Como, See Sterling.
Cornell, See Pontiac.
Cowden, See Shelbyville.
Cortland, see Sycamore
Crossville, see Carmi.
Cullom, See Pontiac.
Dalon City, See Sullivan.
Danbers, See Bloomington.
Decatur, I. A. Buckingham.
Deer Grove, See Sterling.
Delavan, See Pekin.
De Land, fee Monticello.
De Soto, See Carbondale.
DeKalb, see Sycamore
De Witt, see Clinton.
Dixon, A. K. Trusdell.
Durand, See Rockford.
Dwight, See Pontiac.
East Dubuque, see Galena,
East Lynn, See Danville
Edgewood, see Effingham.
Edniburg, see Tayloville.
Edwardsville, | Happpy & Travous.
Eesah, see Jerseyville

Effingham. WM. E. BUCKNER

Elah, See Jerseyville.
Eldena, See Dixon.
Elkhart, see Lincoln.
Elkville, See Carbondale.
Elmwood, See Peoria.
Equality, See Shawneetown.
Ewing, See Benton.
Empire, See Sterling.
Enfield, see Carmi.
Eureka, C. H. Radford.
Erie, See Sterling.
Fairbury, See Pontiac.
Fairmount, See Danville.
Farmer City, see Clinton.
Fieldon, See Jerseyville.
Fidelity, see Jerseyville.
Fieldon, see Jerseyville
Flanagan, See Pontiac.
Flat Rock, See Robinson.
Forest, See Pontiac.
Fowler, See Quiney.
Franklin, See Dixon.
Fremont, See Pekin.
Fulton, See Sterling.
Galt, See Sterling.
Galesburg, E. H. Leach.
Galesville, see Monticello.
Galena, Jacob Fawcet.
Garden Prairie, see Belvidere
Genesco, Charles Dunham.
Grafton, See Jerseyville.
Grandview, see Paris
Grafton, see Jerseyville
Grand Tower, | See Murphysboro
Grant Park, see Kankakee.
Grayville, see Carmi.
Griggsville, see Pittsfield
Greenup, see Toledo.
Hammond, see Monticello.
Hardinsville, See Robinson.
Harrisburg, See Benton.
Hartsburg, see Lincoln.
Harvel, See Litchfield.
Havana, Fullerton & Wallace.
Heyworth, See Bloomington
Highland, see Edwardsville.
Highland Park, see Waukegan
Hillsboro, see Litchfield.
Hinckley, see Sycamore
Hindsboro, see Tuscola.
Homer, See Danville.
Honey Bend, See Litchfield.
Hoopston, See Danville.
Hopedale, See Pekin.
Humbolt, See Mattoon-
Hume, see Paris
Hutsonville, See Robinson.
Jacksonville, E. G. Wilson.
Jamestown, see Carlyle.
Janesville, see Toledo.
Jerseyville, Warren & Pogue.
Jonesboro, See Anna.
Jewett, see Toledo.
Joy, See Aledo.
Kankakee, Daniel H. Paddock, (Master in Chancery)
Kansas, see Paris
Keithsburg, See Aledo.
Kempton, See Pontiac.
Kenney, see Clinton.
Knderhook, see Pittsfield
LaFayette, See Toulon.
Lake Forest, see Waukegan.
Lanark, see Mount Carroll.
La Salle, see Ottawa.
Lawrenceville, see Robinson
Lexington, See Bloomington.
Leroy, See Bloomington.
Lincoln, C. I. Forsyth.
Litchfield, Robt. McWilliams
Lovington, See Sullivan.
Lyndon, See Sterling.
McLean, See Bloomington.
Mackinaw, See Pekin.
Mackville, see Monticello.
Mansfield, see Monticello.
Manteno, see Kankakee.
Maroa, see Clinton.
Marseilles, see Ottawa.
Marshall, Robert E. Hamill.
Martinsville, see Marshall.
Mason, see Effingham.
MaKonda, See Murphysboro.
Malden, see Princeton
Mendon, See Quincy.
Meredosia, see Jacksonville.
Milan, see Rock Island.
Millersburg, See Aledo.
Minier, See Pekin.
Minonk, See Pontiac
Moawequa, see Shelbyville
Moline, see Rock Island.
Milton, see Pittsfield.
Momence, see Kankakee.
Morrison, See Sterling.
Mound City, See Cairo.
Monmouth, | Stewart & Stewart.
Monticello, | David McWilliams.
Morrisonville, see Taylorville
Mt. Sterling, see Rushville.
Mt. Vernon, Pollock & Sons.
Mount Carbon, See Carb'n'dl.
Mount Carroll, Mackay Bros.
Mount Pulaski, see Lincoln.
Mulkeytown, See Benton.
Murrayville, see Jacksonville
Murdock, see Tuscola.
Murphysboro, { Geo. W. Hill J. H. Martin.
Nauvoo and all towns in Hancock Co } Geo. A. Ritter.
Neoga, see Toledo.
Nashville, and all towns in Wash Co. } H. H. Hosmer
Newman, see Tuscola.
Newmansville See Virginia.
New Boston, See Aledo.
New Haven, See Shawneetown.
Newton, See Robinson.
New Windsor, See Aledo.
New Canton, see Pittsfield
New Salem, see Pittsfield
Newbern, see Jerseyville
Nebo, see Pittsfield
Normal, See Bloomington
Nokomis, Geo. M. Stevens.
Norris City, see Carmi.
North Henderson, See Aledo.
Norwood, See Aledo.
Oakland, see Tuscola.
Oakville, See Nashville.
Oconee, see Shelbyville
Olney, See Robinson.
Omaha, See Shawneetown.
Odell, See Pontiac.
Onarga, See Watseka.
Otterville, See Jerseyville
Ottawa, Blanchard & Blanchard.
Otterville, see Jerseyville
Owaneco, see Taylorville.
Palmer, see Taylorville.
Pana, see Taylorville.
Paris, Jos. C. Ficklin
Palestine, See Robinson.
Parish, See Benton.
Peoria, NICHOLAS ULRICH.
Princeville, See Peoria.
Pecatonica, See Rockford.
Perry, see Pittsfield
Pinckneyville, see Du Quoin
Pittsfield, Orr & Crawford
Pomona, See Murphysboro.
Pontiac, C. C. Strawn.
Poplar Grove, see Belvidere
Prophetstown, see Sterling.
Princeton, W. A. Johnson
Quincy, W. W. Berry.
Rankin, See Danville.
Raymond, See Litchfield.
Ridge Farm, See Danville.
Ridgeway, see Shawneetown
Robinson, Robb & Bradberry.
Roanoke, see Eureka.
Rock Falls, See Sterling.
Rockton, See Rockford.
Rock Island, { M. M. Sturgeon
Rockford, C. M. Brazee.
Round Grove, See Sterling.
Rossville, See Danville.
Rockport, see Pittsfield
Rushville, and all towns in Schuyler Co. } J. C. Bagby
Sandwich, see Sycamore
Saybrook, See Bloomington.
Savanna, see Mount Carroll.
Shannon, see Mount Carroll
Scotland, see Paris
Secor, see Eureka.
Shawneetown, Bowman & Pillow.
Sheldon, See Watseka.
Shelbyville, Moulton, Chafee & Headen.
Shumway, see Effingham.
Sigel, see Shelbyville
Somanauk, see Sycamore
Springfield, Geo. A. Sanders.
Spring Garden, See Benton.
St Anne, see Kankakee
Staunton, See Carlinville.
Stewardson, See Shelbyville
St. Jacob's, see Edwardsville
Stonington, see Taylorville.
Strawn, See Pontiac.
Streator, see Ottawa.
Stork, see Toulon
Stanford, See Bloomington.
Sullivan, A. C. Mouser,
Sublette, See Dixon.
Summit, See Sullivan.
Sunbeam, See Aledo.
Sycamore, Jones & Bishop
Tamaroa, see Du Quoin.
Tampico, J. W. White.
Taylorville, Jno. G. Drennan.
Thompson, see Mount Carroll
Thompsonville, See Benton.
Tiskilwa, see Princeton
Toledo, Green & Woods.
Toulon, J. H. Miller.
Tower Hill, see Shelbyville
Tuscola, | Leslie G. MacPherson.
Urbana, Thomas J. Smith.
Vermillion, see Paris
Viola, See Aledo.
Virden, See Carlinville.

Waldron, see Kankakee.
Wapello, see Clinton.
Warren, see Galena.
Warsaw, see Nauvoo.
Washington, See Pekin.
Wateeka, Kay & Evans.
Watson, see Effingham.
Walshville, See Litchfield.
Waterman, see Sycamore.
Waukegan and all towns in Lake Co. | Norman A. Lough
Waverly, see Jacksonville..
Woodson, see Jacksonville
Waynsville. see Clinton
Weldon, see Clinton.
West Jersey. see Toulon
White Heath, see Mont cello.
Windsor, See Shelbyville.
Wilmington, J. W. Merrell.
Woodhull, See Kewanee.
Wyoming, John E. Decker.
Wyanet. see Princeton

INDIANA.

Adams, see Greensburg.
Adaville, See Monticello.
Akron, See Rochester.
Alamo, see Crawfordsville.
Albany, see Muncie.
Alexandria, See Anderson.
Ambia, see Fowler.
Anderson, | Marcellus A. Chipman.
Angola. Emmett A. Bratton.
Arthur, see Petersburg.
Augusta, see Petersburg.
Andrews, see Huntington.
Argos, see Plymouth.
Arlington, See Rushville.
Barnettsville, See Monticello
Batesville, see Greensburg.
Barbers' Mills, see Bluffton
Battle Ground, see LaFayette
Berne, See Geneva.
Billingsville, see Liberty.
Bluffton, | Wilson, Todd & Duglay.
Boonville, see Rockport.
Bowling Green, see Brazil.
Brazil, McGregor & Compton.
Boswell, see Fowler.
Bourbon, see Plymouth.
Boyleston, see Frankfort.
Bremen, see Plymouth.
Bristol, See Elkhart.
Brookston, See Monticello.
Brownsburg, See Danville.
Brooklyn, see Martinsville
Brunswick, See Crown Point
Bryant, See Geneva.
Buel City, See Sullivan.
Burlington, see Kokomo.
Butler O. L. Young.
Cadiz, see New Castle.
Cambridge, see Richmond.
Camden, See Portland.
Carbon, see Brazil.
Chrisney, see Rockport.
Clay City, see Brazil.
Carlisle, See Sullivan.
Carthage, See Rushville.
Canaan, see Madison
Centerville, see Richmond.
Churubusco, see Col. City.
Clarksburg, see Greensburg.
Clinton, see Newport.
Cloverdale, see Greencastle.
Coatesville, See Danville.
Coesse, see Columbia City.
Colfax, see Frankfort.
Collins, see Churubusco.
Columbia City, Marshall & McNagny.
Crawfordsville, L. J. Coppage
Creston, See Crown Point
Crown Point. Griffin & Son.
Dana, see Newport.
Danville, M. W. Hopkins.
Darlington, } see Crawfordsville.
Dayton, see LaFayett
Decatur, Peterson & Huffman
Delphi, John C. Odell.
Deputy. see Madison
Disco, see N. Manchester.
Dublin, see Richmond.
Dugger, See Sullivan.
Dunkirk. See Portland.
Duer, See Crown Point.
Dupont. see Madison
Earl Park, see Fowler.
Eaton, see Muncie.
Elkhart, | Orville T. Chamberlain.
Elwood, See Anderson.
Eminence, see Martinsville.
Eugene, see Newport.

Evansville, CHAS. L. WEDDING.

Fairbanks, See Sullivan
Falmouth, See Rushville.
Farmland, See Winchester.
Farmersburg, See Sullivan
Filmore, see Greencastle.
FortBrauch, See Princeton.
Fort Wayne, Robert Stratton.
Fountain City, see Richmond.
Fowler, Geo. Wadsworth.
Francisca, Ree Princeton.
Frankfort, Suit & Bayless.
Frankton, See Anderson.
Fremont, see Angola.
French Lick, see Paoli.
Galveston, see Logansport.
Geneva, Tharp & Drew.
Gessie, see Newport.
Glenwood, See Rushville.
Goodland, See Kentland.
Goshen, see Elkhart.
Gosport, see Spencer.
Grandview, see Rockport.
Graysville, See Sullivan.
Greencastle, Geo. Hathaway.
Greensboro, see New Castle.
Greensburg, David A. Myers.
Greentown, see Kokomo.
Hamilton see Angola.
Huntingsburg, see Rockport
Hammond, See Crown Point
Hardinsburg, see Paoli.
Hebron, see Valparaiso.
Heasville, See Crown Point.
Hillsboro, see Richmond.
Hobart, See Crown Point.
Homertown, see Petersburg.
Huntington, G. W. Stultz.
Huron, see Paoli.
Indianapolis, W. A. FOSTER.
Inwood, see Plymouth.
Jamestown, see Danville.
Jasper, see Rockport.
Jeffersonville, Howard & Reid
Jerome, see Kokomo.
Kokomo, Valle & Cooper.
Kempton, see Tipton.
Kewanna, See Rochester.
Keystone, See Bluffton.
Kingsland, See Bluffton.
Kirklin, see Frankfort.
Knightstown, see New Castle.
Kouts, see Valparaiso.
Lafayette, John F. McHugh.
Lancester, see Huntington.
Larwill, see Columbia City
Ladoga, see Crawfordsville.
La Porte, Weir & Weir.
Lebanon, see Danville.
Leitoy, See Crown Point.
Liberty Centre, See Bluffton.
Linden, see Crawfordsville.
Linn Grove, See, Geneva.
Lizton, see Danville.
Logansport, W. S. Wright.
Lowell, See Crown Point.
Lynn, See Winchester.
Mace, see Crawfordsville.
Manilla, See Rushville.
Marlboro, See Rensselaer.
Martinsville, Adams & Newby
Madison. Bellamy & Copeland
Merom, See Sullivan.
Merrillville, See Crown Point
Michigan City, See LaPorte.
Michigantown, see Frankfort.
Middleburg, see Elkhart.
Middletown, see New Castle.
Millhousen, see Greensburg.
Milroy, See Rushville.
Milton, see Richmond.
Mishawaka, see South Bend.
Mitchell, see Paoli.
Monon, See Monticello.
Monticello, | Reynolds & Sellers.
Mooresville, See Martinsville
Morgantown, See Martinsville
Morris, see Greensburg.
Monrovia, see Martinsville.
Montgomery, see LaFayette
Mount Etna, see Huntington.
Mt. Vernon, See Evansville.
Muncie, } Walterhouse. & White
New Castle, Joseph M. Brown.
New Carlisle, see South Bend
New Corydon, See Geneva.
New Lebanon, See Sullivan.
North Madison. see Madison
New Market, see Crawf'd'vil
New Paris, see Elkhart.
New Point, see Greensburg.
Newport, Adam B. Littlepage.
New Ross, see Crawfordsville
Noblesville, See Anderson,
North Salem, See Danville.
North Judson, see Knox.
Nottingham, See Bluffton
Orangeville, see Paoli.
Orland, see Angola.
Orleans, see Paoli.
Ossian, See Bluffton.
Oxford, see Fowler.
Oakland, See Princeton.
Paoli, Thomas B. Buskirk.
Parker, See Winchester.
Parkersburg, see Crawf'd'vill
Paragon. see Martinsville
Patton, see Sullivan
Pendleton. See Anderson.
Perryville, see Newport.
Petersburg, E. P. Richardson
Pikeville, see Petersburg.
Pittsboro, see Danville.
Pittsburg, See Sullivan.
Plainfield, See Danville.
Pleasant Lake, see Angola.
Pleasantville, See Sullivan.
Pleasant Ridge, | See Rensselaer.
Plymouth, B. D. Crawford.
Portland, Cornelius Corwin.
Poneto, see Bluffton
Raleigh, See Rushville.
Red Key, See Portland.
Remington, See Rensselaer.
Rensselaer, | Mordecai F. Chilcote.
Reynolds, See Monticello.
Richmond, Geo. Coale, J. P.
Ridgeville, See Winchester.
Reann, see N. Manchester.
Roanoke, see Huntington.
Rockdale, see Greencastle.
Rockport, Logsdon & Kramer
Rockville, Rice & Johnson.
Rome, See Tell City.
Ross, See Crown Point.
Rossville, See Frankfort.
Royal, see Logansport.
Rushville, Frank J. Hall.
Russellville see Greencastle.
Russiaville, see Kokomo.
Salem, Alspaugh & Lawler.
Sardinia, see Greensbur
Scircleville, See Frankfort
Sedalia, See Frankfort.
Selma, see Muncie.
Shelbourne, see Sullivan
South Whitley, see Col. City
Scircleville, see Frankfort.
Shoals, see Paoli.
South Bend, T. E. Howard.
Spencer, see Brazil.
Spiceland, see New Castle.
Stockwell, see LaFayette
St. Paul, see Greensburg.
Sullivan, Hays & Hays.
Surrey, See Rensselaer.
Tell City, W. S. Lamb.
Tocsin, See Bluffton.
Troy, See Tell City.
Union City, See Winchester.
Unionville, see Paoli.
Valparaiso | Bartholomew & Crumpacker
Vera Cruz, see Bluffton
Veraliuz, See Bluffton.
Versailles, } Wm. D. Wilson. C. H. Wilson.
Wabash, see N. Manchester.
Wakarusa, see Elkhart.
Walcott, See Monticello.
Walkerton, see South Bend.
Walton, see Logansport.
Waterloo, see Butler.
Waveland, see Crawfordsville
Waynetown, see Crawf'd'vill
Westport, see Greensburg.
West Baden, see Paoli.
West Point, see LaFayette
Wheeler, see Valparaiso.
Winchester, A. J. Stakebake.
Wingate, see Crawfordsville.
Zanesville, see Bluffton
Zionsville, see Indianapolis.

IOWA

Adel, White & Clarke.
Agency, see Ottumwa.
Afton, see Creston.
Ainsworth, see Washington.
Alden, See Ackley.
Algona, F. M. Taylor.
Allerton, E. L. Hart.
Arcadia, See Carroll City.
Alton, see Orange City.
Altoona, See Des Moines.
Allison, Craig & Smith
Anamosa. John S. Stacy.
Andrew, see Maquoketa.
Aspinwall, see Denison.
Astor, see Denison.
Angus, See Boone
Anita, See Atlantic.
Aplington, See Allison.
Ashton, see Sibley.
Audubon, Andrews, Stotts & Myers.
Avoca, See Council Bluffs.
Ayershire. see Emmetsburg
Bagley, see Guthrie Centre.
Baldwin, see Maquoketa.
Bancroft, See Algona.
Bartlette, See Hamburg.
Bassett, See New Hampton.
Batavia, see Fairfield.
Battle Creek, See Ida Grove.
Bayard, see Guthrie Centre.
Bedford, G. B. Haddock.
Belle Plain, See Vinton)
Belmond, see Eagle Grove
Bellevue, see Maquoketa.
Beloit, see Rock Rapids.
Bevington, see Winterset.
Big Rock, See Davenport.
Blairstown, See Vinton.
Boone, Hull & Whitaker.
Bradyville, see Clarinda.
Brayton, See Audubon.
Breda, See Carroll City.
Brighton, see Washington.
Bristow, See Allison.
Bristol, see Northwood
Brooklyn, see Victor.
Buffalo, See Davenport.
Burlington, and all towns in Des Moines Co. } John C. Power.
Burt, see Algona.
Dyersville, See Dubuque.
Calliope, see Elk Point, Dak.
Carroll City, Jos. M. Drees.
Carroll, See Carroll City.
Coon Rapids, see Carroll City
Camanche, See Clinton.
Canton, see Moquoketa.
Carlisle, See Indianola.
Carson, See Council Bluffs.
Cascade, See Dubuque.
Casey, see Guthrie Centre
Castalia, see Ossian.
Cambridge, see Nevada
Cedar Falls, see Waterloo.
Cedar Bluffs, see Tipton.
Cedar Rapids, and all towns in Linn Co.. } A. B. West
Centre Juuc't. see Anamosa.
Centreville, A. J. Baker.
Chariton, M. E. Thorpe.
Churdan, See Jefferson.
Cleveland, see Chariton.
CharlesCity, See Nora Springs
Chelsea See Traer.
Chillicothe, see Ottumwa.
Cincinnati, see Centerville.
Clarinda, } Hepburn & Thummell.
Clarksville, See Allison.
Clayton, see McGregor.
Clearfield, see Bedford.
Clarion, see Eagle Grove.
Clear Lake, See Mason City.
Clermont, see West Union.
Clinton, Geo. B. Young.
Clearfield, see Creston.
Colfax, See Newton.
College Springs, see Clarinda
Color do, see Nevada
Columbus Jc., see Wapello.
Concord, Brockway & Elde
Conesville, see Muscatine.
Conrad, see Grundy Centre.
Conway, see Bedford.
Corydon, See Allerton.
Cooper, See Jefferson.
Corning, Maxwell & Dale.
Council Bluffs } Smith, Carson & Harle
Crawfordsville, } see Washington
Creston, John M. Hayes.
Cromwell, see Creston.
Curlew, see Emmetsburg
Dallas Centre, see Adel.
Dakota City, See Humbolt.
Davenport, A. J. Hirschl
Danville See Burlington.
Dayton, see Fort Dodge.
Dedham, See Carroll City.
Delaware, see Manchester.
Derby, see Chariton.
Delta, see Sigourney.
Delmar, See Clinton.
De Soto, see Adel.
Denison. D. L. Boynton.
Des Moines, Callender & Smith.
De Witt, See Clinton.
Dexter, See Adel.
Dorchester, see Lansing
Dixon, see Davenport.
Doon, see Rock Rapids.
Dover, see Keokuk
Dow City, see Denison.
Dubuque, Utt Brothers.

Any one writing to parties in this list should mention The Chicago Law Journal.

Dumont, See Allison.
Dunlap, See Logan.
Dysart, See Traer.
Eagle Grove, C. O. Bailey.
Earlham, see Winterset.
Early, see Odebolt.
East Port, see Hamburg
Ediyville, see Ottumwa.
Eldon, see Ottumwa.
Elberon, See Traer.
Elgin, see West Union.
Elkader, see McGregor.
Elk Port, see McGregor.
Elliott, see Villisca.
Ely, see Cedar Rapids.
Emmetsburg, C. E. Cohoon
Epworth, See Dubuque.
Essex, see Clarinda.
Estherville, Soper & Allen.
Exira, See Audubon.
Fairport, see Muscatine.
Farley, See Dubuque.
Farnhamville | see Rockwell City.
Farragut, See Hamburg.
Fayette, see West Union.
Festina, see Ossian.
Fertile, see Northwood
Fletcher, see Odebolt.
Fonda, see Pocahontas.
Fontanelle, see Winterset.
Fort Dodge, A. E. Clarke.
Fort Madison, Casey & Casey
Fowler, see New Hampton.
Frankville, see Ossian.
Fremont, see Oskaloosa.
Fredericksburg, see New Hampton
Ft. Atkinson, see Ossian
Galia, See Ida Grove.
Garrison, See Vinton.
Glidden, See Carroll City.
Gilmore, see Pocahontas.
Goehen see Mount Ayr.
Gladbrook, See Traer.
Goldfield, see Eagle Grove.
Gowrie, F. L. Easley.
Grafton, See Northwood.
Granville, see Orange City.
Grand Junction, see Jefferson
Gravity, see Bedford.
Gray, See Audubon.
Grafton, see Northwood.
Greene, See Allison.
Greenfield, see Winterset.
Greeley, see Manchester.
Grinnell, see Victor.
Grundy Centre Rea & Hayes.
Guthrie Centre, W. D. Giffin.
Guttenburg, see Mc Gregor.
Haibur, See Carroll City.
Hawarden, See Elk Pt. Dak·
Hamburg, Stow & Hammond
Hancock, See Big Grove.
Harlan, Macy & Gammon.
Harper Ferry SeeLansing.
Harper, see Sigourney.
Havelock, see Pocahontas.
Hartley, see Spencer.
Hawkeye, see West Union.
Hedrick, see Sigourney.
Hepburn, see Clarinda.
High Lake, see Estherville.
Holland, see Grundy Centre,
Holstein, See Ida Grove.
Hoopo s.s e Orang- City.
Hubbard, see Eldora.
Humboldt, A. D. Bicknell.
Indianola, Henderson & Berry
Ionia, See New Hampton.
Iowa City, A. E. Swisher.
Imogene, see Hambur:
Ireton, see Orange City.
Irvington, see Algona.
Jefferson, Z. A. Church.
Jolley, see Rockwell City
Kellerton, see Mount Ayr.
Kellogg, See Newton.
Keota, see Sigourney.
Kalo, see Gowrie.
Kensett, see Northwood
Kent, see Creston.
Keokuk, W. B. Collins.
Kingsley, see LeMars
Lake City, see Rockwell City.
Lake Mills see Northwood.
Lake Park, s e Spirit Lake.
Lansing, L. E. Fellows.
Laporte, see Waterloo.
Lawler, see New Hampton.
Laurens, see Po ahontas.
Leighton, see Oskaloosa.
Lettsville, see Wapello.
Le Claire, see Davenport.
Lehigh, see Fort Dodge.
LeMars, Amos & Alline.
Lenox, see Bedford.
Lewis, See Atlantic.
Linevil e, See Allerton.
Little Sioux, see Logan.
Livermore, See Humboldt.
Lockridge, see Fairfield.
Logan, J. W. Barnhart.
Lonrville, see Rockwell City.
Lone Tree, See Iowa City.
Lucas, see Charlton.
Lyon. See Clinton.
Macedonia, see Council Bluffs
Macksburg, see Winterset.
Magnolia, see Logan.
Manson, see Rockwell City.
Malla.d, see Emmetsburg
Manchester, Bronson & Leroy
Manly, see Northwood.
Manning, See Carroll City.
Manson, See Rockwell City.
Manly Jc., see Northwood
Mapleton, T. B. Lutz.
Maquoketa, G. L. Johnson.
Martinsburg, see Sigourney.
Marengo, see Victor.
Marion, see Cedar Rapids.
Marne, See Atlantic.
Marshalltown, J. M. Parker.
Mason City, Miller & Cliggett.
Masonville, see Manchester.
Mau ice, see Orange City.
Maynard, see West Union.
Maxwell, see Nevada
McGregor, Asahel Chapin.
McPaul, see Hamburg
Mediapolis, see Burlington.
Menlo, see Guthrie Centre.
Merrill, see LeMars.
Milford see Spencer.
Milo, see Indianola.
Miles, see Maquoketa.
Milford, see Spirit Lake.
Minburn, see Adel.
Minden, see Council Bluffs.
Mitchellville, see Des Moines
Modale, see Logan.
Mo. Valley, See Logan.
Moingona, see Boone.
Mondamin, see Logan.
Monroe, See Newton.
Monticello, see Anamosa.
Montour see Traer.
Montrose, see Keokuk
Morning Sun, C. M. Wright.
Mount Ayr, Morris & Allyn.
Monmouth, see Maquoketa.
Mo. Valley, see Logan.
Moravia, see Centerville.
Morrison, see Grundy Centre.
Moulton, see Centerville.
Mount Etna, see Corning.
Mount Auburn, See La Porte.
Mount Pleasant, | Woolsen & Rabb.
Murray, See Osceola.
Muscatine, T. R. Fitzgerald.
Nashua, see New Hampton
Neola, see Council Bluffs.
Nevada, J. A. Fitchpatrick.
New Albion see Lansing.
New Hampton, J. H. Powers.
New Hartford, see Allison.
New Market, see Bedford.
New Sharon, see Oskaloosa.
Newton, Jas. A. Kerr.
Nichols, see Muscatine.
Nodaway, see Corning.
Nora Springs, E. S. Wheeler,
Northwood, Pickering & Hartley.
Oakfield, see Audubon.
Oakland, see Council Bluffs.
Olin, see Anamosa.
Onawa City, see Mapleton.
Osage and all towns in Mitchell Co | F. F. Coffin.
Orange City, | Pitts & Kissey.
Oskaloosa, H. W. Gleason
Osceola, M. L. Temple.
Otho, see Fort Dodge.
Oelwein, see West Union.
Ogden, see Boone.
Ottumwa, S. E. Adler.
Oxford Mills, See Clarence.
Oxford Junc't, see Anamosa.
Paton, see Gowrie.
Parkersburg, see Allison.
Paton, See Jefferson.
Patterson, see Winterset.
Pattersonville, | see Rock Rapids.
Paulina, see Sanborn.
Panora, see Guthrie Centre.
Percival, see Hamburg.
Perry, see Adel.
Peru, see Winterset.
Percival, see Hamburg
Peterson, see Spencer.
Plover, see Pocahontas.
Pochontas, Bradley & Harlan.
Prairie City, See Newton.
Preston, see Maquoketa.
Plum Hollow, see Hamburg.
Plymouth, see Mason City.
Polk City, see Des Moines.
Pomeroy, See Rockwell City
Postville, see Lansing.
Prescott, see Corning.
Primghar, see Sanborn.
Princeton, see Davenport.
Randalia, see West Union.
Sandusky, see Keokuk
Salina, see Fa rfield
Ramsey, see Algona.
Redfield, see Adel.
Red Oak, Smith McPherson.
Redding, see Mount Ayr.
Reinbeck, see Grundy Cntr.
Reubens, see Pocahontas.
Rolfe, see Pocahontas.
Remsen, see LeMars
Richmond, see Washington.
Rippey, see Jefferson.
River Sioux, see Logan.
Riverton, see Hamburg.
Riverside, see Washington.
Rock Falls, see Mason City.
Rockford, see Nora Springs.
Roselle, See Carroll City.
Rock Rapids, H.B. Pierce
Rock Valley, see Orange City.
Rockwell City, | Mattison & Rice.
Rodman, see Emmetsburg
Roland, see Nevada
Ross, see Audubon
Russell, see Chariton.
Ruthven, see Spencer.
Sabula, see Maquoketa.
Sac City, see Odebolt.
Sanborn, Warren Walker.
Saylorville, see Des Moines,
Schaller, see Odebolt.
Seney, see LeMars.
Seymour, See Allerton.
Scranton, see Jefferson.
Shellsbugh, See Vinton.
Shell Rock, see Allison.
Sheldon, see Sanborn.
Shenandoah, see Hamburg.
Sheridan, see Orange City.
Sibley see Spirit Lake.
Sidney, see Hamburg
Sigourney, | Sampson & Brown
Sioux City and all towns in Woodbury Co | J. P. Blood.
Solon, see Iowa City.
Southerland, see Sanborn.
Spencer, E. C. Hughes.
Spillville, see Ossian.
Spirit Lake, Fred L. Rice.
Stuart, see Guthrie Centre.
Stanton, see Villisca.
St. Charles, see Winterset.
Steamboat Rock, see Eldora.
Stanwood, see Tipton.
Story City, see Nevada
Stratford, see Gowrie.
Sully, See Newton.
Summit, see Indianola.
Swan Lake, see Estherville.
Tabor, see Hamburg
Templeton, See Carroll C ty.
Tingley, see Mount Ayr.
Truro, see Winterset.
Union, see Eldora.
Unionville, see Spencer.
Vail, see Denison.
VanHorne, See Vinton.
Van Meter, see Adel.
Van Wert, see Osceola.
Victor, H. F. Garretson.
Villisca, W. H. Redmond
Village Creek, see Lansing
Viola, see Keokuk
Vinton, Ray Billingsley.
Waucoma, see West Union
Wall Lake, see Odebbolt
Wapello and all towns in Louisa Co. | E. W. Tatlock
West Side, see Denison.
Waterloo M. T. Owens
Washington, Dew & Eicher.
Webster City, Chase & Chase.
Wellman, see Washington.
Wellsburg, see Grundy Cntr.
Wesley, see Algona.
West Liberty, see Muscatine.
West Union, | S. B. Zeigler | I. M. Weed.
West Bend, see Emmetsburg
West Point, see Keokuk
What Cheer, see Sigourney.
Whitemore, see Algona.
Wilton, see Muscatine.
Winterset, A. W. C. Weeks.
Whittemore, see Algona.
Williams- town. | See New Hampton.
Wolcott, see Davenport
Woodbine, see Logan.
Woodburn, see Osceola.
Woodstock, see Eagle Grove
Wyoming, see Anamosa.
Zearing, see Nevada

KANSAS.

Alden, see Sterling.
Alma, George G. Cornell.
Altoona, see Fredonia.
Assaria, see Salina
Americus, see Emporia.
Ames, see Clyde.
Argentine, see Wyandotte.
Argonia, see Wellington.
Armondale, see Wyandotte.
Atchison, Bailey & Baldwin.
Atwood, M. A. Wilson.
Augusta, see Eldorado.
Baldwin City, see Lawrence.
Bavaria, see Salina
Barnes, see Greenleaf.
Beloit, see Cawker City.
Belle Plaine, See Wellington
Blue Rapids | W. H. H. Freeman.
Burlingame, Wm. Thompson
Bross, See Kingman.
Burr Oak, see Mankato.
Burrton, see Newton.
Buffalo, see Hays City.
Bismark, see Alma.
Bradford, see Clifton.
Bronson, see For Scott
Brookville, see Salina
Burlington, | Geo. E. Manchester.
Canton. See McPherson.
Caldwell, see Wellington.
Camden, see Council Grove
Cawker City, Frank J. Kelley
Cedarville, see Sedan
Centralia, see Seneca.
Chanute, see Erie.
Chase, see Lyons.
Chase, see Sterling.
Chautauqua, see Sedan.
Cherokee See Girard.
Chetopa, Leroy Neale,
Cheney, see Wichita.
Circleville, see Holton
Clear Water, see Wichita.
Cleveland, See Kingman.
Cloverdale, See Sedan.
Conway, See McPherson.
Clifton, J. W. Chadwick
Clyde, C. W. Van DeMark.
Colony, see Garnett.
Council Grove, | Johnston & Bertram
Coyville, see Fredonia.
Cherryvale, see Independence
Columbus, | Coulter, Beall & Shearman.
Cresson, see Stockton.
Derby, see Wichita.
De Soto, see Olathe.
Dodge City and all towns in Ford Co. | Thomas S. Jones
Douglass, see El Dorado.
Dunlap, see Council Grove
Edgerton, see Olathe.
Edmond, see Norton.
Effingham, see Atchison.
El Dorado, Eugene E. Carr.
Elgin, see Sedan.
Elk City, see Independence
Elmwood, see Lyons.
Ellsworth, R. W. Carter.
Emporia, P. P. Hillerman.
Erie, C. A. Cox.
Eskridge, see Alma.
Eudora, see Lawrence.
Eureka, T. L. Davis.
Fall River, see Eureka.
Fall River, see Fredonia.
Farlington, See Girard.
Farmersburg, See Sedan.
Fellowsburg, See Dodge City.
Florence, see Peabody.
Fontana, see Paola.
Fort Scott, Harris & Spencer.
Fredonia, T. J. Hudson.
Fulton, see Ft. Scott
Galva, See McPherson.
Gardner, see Olathe.
Garnett, A. J. Smith.
Gaylord, Webb McNall.
Genda Springs, see Wellington
Girard, James Brown.
Glen Elder, see Cawker City.
Great Bend, Wm. H. Dodge.

Greeley, see Garnett.
Greenleaf, W. P. Mudgett.
Grinnell, see Hays City.
Harts Mills, See Sedan
Haynsville, See Pratt.
Hays City, C. W. Reeder.
Herndon, see Atwood.
Halstead, see Newton.
Harper, Sam. S. Sisson.
Hartford, see Emporia.
Harveyville, see Alma.
Hepler, See Girard.
Hillsboro, see Marion Centre.
Hillsdale, see Paola.
Holton, Hayden & Hayden.
Humboldt, G. A. Amos.
Hunnewell, See Wellington.
Huron, see Atchison.
Hutchison, Zimmerman & Taylor.
Independence, J. B. Ziegler.
Ionia, see Mankato.
Iuka, See Pratt.
Jewell City, see Mankato.
Kingman, William Green.
Kansas Centre, see Lyons.
Kansas City, see Wyandotte
Key West, see Burlington.
Kinsley, See Dodge City.
Kirkfield, See Dodge City.
Laudell, see Atwood.
Lawrence, R.J. Borghalthaus
Laura, see McPherson.
La Cygne, J. V. Donaldson.
La Fountain see Neodesha.
Leabo, see Burlington.
Leavenworth, J. D. Shafer.
Lehigh, see Marion Centre.
Lenora, see Norton.
Leon, see Eldorado.
Le Roy, see Burlington.
Lincoln and all other towns in Lincoln Co. — Lou A. Minx
Lindsburg, see McPherson.
Linn, see Clifton.
Little River, see Ellsworth
Lima, See Greenleaf.
Liberty, see Independence
Little River, see Lyons.
Longton, see Howard.
Louisburg, see Paola.
Louisville, R. S. Hick.
Lyons, J. W. White.
Madison, see Eureka.
Mankato, Wm. Metcalf.
Marion, see Marion Centre.
Marion Centre, L. F. Keller.
Maud, See Kingman.
Mount Nebo, See Pratt.
Murdock, See Kingman
McPherson, D. P. Lindsay.
Motor, see Stockton.
McCune, See Girard.
Milan, See Wellington.
Moline, see Howard.
Monmouth, See Girard.
Monrovia, see Atchison.
Mulvane, See Wellington.
Muscotah, see Atchison.
Neodesha, see Fredonia.
Neosho Rapids, see Emporia.
Newark, see Neodesha.
Newton, Bowman & Buheer
Netawaka, see Holton
New Cambria, see Salina
Nickerson, see Hutchison.
Northfield, see Wellington.
Omro, see Mankato.
Olathe, G. B. Lord.
Oakland, See Kingman.
Ottawa, Enoch Harpole.
Onaga, see Louisville.
Onelda, see Seneca.
Opolis, See Girard.
Osage Mission, see Erie.
Osawatomie, see Paola.
Oswego, Jess. Brockway
Ottumwa, see Burlin.
Oxford, See Wellington.
Palmer, see Greenleaf.
Paola, J. E. Wright.
Parkerville, see Council Grove
Peabody, see Marion Centre.
Peru, see Sedan.
Pittsburg, See Girard.
Plainville, see Stockton.
Pleasanton, Blue & Rich.
Pratt, R. F. McGrew.
Raymond, see Sterling.
Raymond, see Lyons.
Reading, see Emporia.
Rosedale, see Wyandotte.
Salem, see Mankato.
Saratoga, see Pratt.
Sedan, J. D. McBrian.
Severy, see Eureka.
Spring Creek, see Sedan.
Spring Hill, see Olathe.
Salem, see Jewell City.
Salina, T. F. Garver. T. L. Bond.
Sedgewick, see Newton.
Seneca, J. P. Taylor.
Soldier City, see Holton
Spring Hill, see Paola.
Stafford, See St. John.
Sterling, W. G. Hamrick.
St. John, Weeks & Bennett.
St. Marys, see Louisville.
Stockton, W. H. Barnes.
Strawberry, see Clifton.
Strawn, see Burlington.
Sturling, see Ellsworth.
Thomas Centre, see Atwood,
Tipton, see Cawker City.
Toronto, see Eureka.
Topeka, A. BERGEN.
Uniontown, see Fort Scott
Valley Centre, see Wichita.
Vining, see Clyde,
Walnut, see Erie.
Walton, see Newton.
Wa. Keeney, see Hays City.
Wallace, see Hays City.
Wano, see Atwood.
Washington, See Greenleaf.
Wamega, see Louisville.
Wabaunsee, see Alma.
Waterloo, see Kingman.
Windom, see McPherson.
Waverly, see Burlington.
Webster, see Stockton.
Welda, See Garnett.
Wellington, Ledru Guthrie
Westphalia, see Garnett.
Westmoreland, see Louisville
Wilson, see Ellsworth.
Whitemore, see Seneca.
Whitney, see Holton
White City, see Council Grove
Wichita, J. M. Balderston.
Winfield, M. G. Troup.
Wyandotte, John T. Harlow.
Yates Centre, W. H. Slavens

KENTUCKY.

Adairsville, see Russellville
Auburn, see Russellville.
Beech Grove, see Calhoun.
Bowling Green, Brownsville. — Wright & McElroy; see Bowling Green.
Calhoun, Jep. C. Johnson.
Cleopatra, see Calhoun.
Central City, See Greenville.
Covington, J. F. & C. H. Fisk
Curdsville, see Owensboro.
Dixon, see Henderson.
Dover, see Maysville.
Elkton, see Russellville.
Flemingsburg, T. L. Given.
Frankfort, D. W. Lindsey.
Franklin, see Russellville.
Georgetown, see Frankfort.
Glasgow, see Bowling Green.
Gratz, see Owenton.
Glenville, see Calhoun.
Greenville, M. C. Hay.
Harmony, see Owenton.
Hartford, see Owensboro.
Hawesville, see Owensboro
Island Station, see Calhoun.
Independence, see Covington
Knottsville, see Owensboro.
Livermore, see Calhoun.
Livia, see Calhoun.
Louisville 341 5-Av — NEWTON G. ROGERS.
and all towns in Jefferson Co.
Ludlow, see Covington
Lusby's mill, see Owenton.
Maysville, G. S. Judd.
Maysilcke, see Maysville.
Mouterey, see Owenton.
Morganfield, see Henderson.
Morgantown, See Greenville.
Mt. Sterling, J. Jay Cornelison
New Columbus, see Owenton.
New Liberty, see Owenton.
Owensboro, R. H. & E. P. Taylor.
Owenton, J. C. Strother
Poplar Grove, see Owenton.
Rochester, See Greenville.
Rumsey, see Calhoun.
Russellville, Frazer, Yost & Thompson.
Sacramento, see Calhoun.
Shelbyville, see Frankfort.
South Carrollton, see Greenville.
Warsaw, see Owenton.
Whitesville, see Owensboro.
Yelvington, see Owensboro

LOUISIANA.

Baton Rouge, K. A CROSS.
Clinton, See Baton Rouge.
New Orleans, Cor. Camp. & Com'l. Place. HERRICK, FOSTER & HERRICK
St. James, see New Orleans.
St. Joseph, see Natchez, Miss
Shreveport, John S. Young.
Practises in all Federal and State Courts.
Vidalia, see Natchez, Miss.

MASSACHUSETTS.

Amherst, see Northampton.
Ashburnham, see Gardner.
Attleboro, see New Bedford
Boston, 150 Devonshire st. — Upham & Proctor
Brookfield, see Worcester.
Brockton, Wm. W. French
E Hampton, see N. Hampton.
Enfield, see Northampton.
Fitchburg, see Gardner.
Florence, see Northampton.
Gardner, E. D. Howe.
Hadley, see Northampton.
Hatfield, see Northampton.
Haydensville, see N. Hampton
Hubbardston, see Gardner,
Mansfield, see New Bedford
Middleboro, see Brockton
N. Brookfield, see Worcester.
N. Hampton, J. B. O'Donnell.
New Bedford — Wendell H. Cobb
Plymouth, see Brockton
Rockland, see Brockton
Spencer, see Worcester.
So. Abington, see Brockton
S. Hampton, see N. Hampton
Springfield, E. P. Bartholomew. H. A. Bartholomew.
Taunton, see New Bedford
Templeton, see Gardner.
Westminster, see Gardner.
Winchendon, see Gardner.
Ware, see Northampton.
Warren, see Worcester.
Williamsburg, see N. Hampton

MICHIGAN.

Ada, see Lowell.
Advance, see Charlevoix.
Albion, See Marshall.
Alba, see Kalkaska
Alcona, see Harrisville.
Algonac, see Port Huron.
Allegan, Padgham & Padgham.
Almont, see Lapeer.
Alma, see St. Louis.
Alpena, J. B. Clayberg.
Ann Arbor, E. K. Frueauff.
Ashton, see Reed City.
Bad Axe, W. T. Bope.
Bangor, see Paw Paw.
Baraga, see L'Anse.
Battle Creek, See Marshall.
Bay City, Geo. W. Mann.
Bay Springs, see Charlevoix
Bayne City, see Charlevoix.
Belding, See Ionia.
Berrien Springs, see Niles
Bellevue, see Charlotte
Boyne Falls, see Kalkaska
Big Rapids, M. Brown.
Black River, see Harrisville.
Blissfield, see Adrian.
Bridgeportsee, E. Saginaw.
Breckenridge, see Midland City.
Brighton, see Howell.
Bronson, see Coldwater.
Brockway Centre, see Port Huron.
Burr Oak, see Sturgis.
Burton Harbor, see Niles
Buchanan, see Niles
Capac, see Port Huron.
Carrollton, see East Saginaw.
Caro, H. H. Markham.
Caseville, see Bad Axe.
Cedar Springs, see G'd Rapids
Charlevoix, J. Milo Katon.
Chase, see Reed City,
Champion, see Marquette
Charlotte, H. H. Cobb
Clarksburg, see Marquette
Clinton, see Adrian
Chebovgan, Geo. E. Frost.
Chesaning, see E. Saginaw
Coldwater, J. G. Parkhurst.
Coleman, see Midland City.
Concord, see Jackson.
Columbiaville, see Lapeer.
Coopersville, see Grand Haven
Corruna, James M. Goodell.
Decatur, see Paw Paw.
Derr, see Allegan
DETROIT and all towns in Wayne Co — G. H. PAINE
Dexter, see Ann Arbor
Dimondale, see Charlotte
Douglass, see Allegan
East Chain Lake, see Fair mount.
East Jordan, see Charlevoix
Eaton Rapids, see Charlotte.
East Saginaw, — Wisner & Draper
Edenville, see Midland City,
Elm Hall, see St. Louis.
Elmira, see Kalkaska
Emmitt, see Port Huron.
Escanaba, John Power.
Fayette, see Escanaba.
Five Lake, see Kalkaska
Fowlerville, see Howell.
Freeland, see E. Saginaw.
Garden Bay, see Escanaba.
Girard, see Coldwater.
Glen Arbor, see Leland.
Grand Ledge, see Charlotte.
Grand Rapids — D. D. & W. H. Hughes,
Grass Lake, see Jackson.
Gratton Centre, see Lowell.
Greenbush, see Harrisville.
Greenville, C. C. Ellsworth.
Hanover, see Jackson.
Hartford, see Paw Paw.
Harrison, see Midland.
Hart, see Pentwater.
Harrisville, Jas. E. Hunt.
Hartland, see Howell.
Hersey, see Reed City.
Hillsdale and all towns in Hillsdale Co. — E. J. March.
Holland, see Grand Haven.
Holly, see Pontiac.
Homer, See Marshall.
Howell, J. L. Pettibone.
Hubbardstown, See Ionia.
Hudson, see Adrian.
Humbolt, see Marquette
Imlay City, see Lapeer.
Indian River, see Cheyboygan.
Ishpeming, E. E. Osborn.
Ithaca, see St. Louis.
Iron Mountain — see Menominee
Jewaeeke, see E. Saginaw.
Jackson, James Gould.
Lamont, see Grand Haven.
L'Anse, Philip R. McKernan.
Lansing, Olds & Robson.
Lapeer, Frank Millis.
Lawton, see Paw Paw.
Lee's Corners, see Midland City.
Leland, Geo. A. Cutler.
Leroy, see Reed City.
Leslie, see Lansing.
Lowell, Milton M. Perry.
Lyons, See Ionia.
Ludington, White & McMahon.
Mackinac, see Cheboygan.
Marlette, George McKay.
Marquette, Ball & Hanscomb
Marshall, H. E. Winsor.
Mason, see Lansing.
Maxine City, see Port Huron
Muncellona, see Kalkaska
Mears, see Pentwater.
Memphis, see Port Huron.

A NEW LAW BOOK PROPERLY APPRECIATED.

Wait on Fraudulent Conveyances,

CREDITORS' BILLS, AND VOID AND VOIDABLE ACTS.

A Practical Treatise, by FREDERICK S. WAIT. Esq., of the New York Bar.

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☞ *This Treatise is invaluable to Lawyers, as it gives, fuller than any other work, practical information respecting Remedies of Creditors, against Debtors, involving the most important questions that constantly arise in every day practice. The work treats fully of the Remedies of Creditors, instituted to annul Fraudulent Conveyances and recover Equitable Assets.*

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The Chicago Law Jounral.

CHICAGO, FEBRUARY, 1885.

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NOTES OF CASES.

THE AMERICAN LAW RECORD for January, contains the case of *G. & S. Manufacturing Co.* v. *Bruckner*, in the Supreme Court of the United States, in which it is *held* that one who has participated in an illegal contract can not assert any right founded upon such contract. When a contract is signed on Sunday but not delivered until a succeeding week-day, it does not take effect on Sunday and is not void. Also *Cochran & Fulton* v. *Anderson Co., Nat. Bank*, in the Kentucky Court of Appeals, on the question of the right of a partner to pledge the firm assets. *Wells* v. *Langbein*, United States Circuit Court E. D., of Iowa holding that where a chattel mortgage on a stock of goods, reserving the right to sell, provided the stock is kept up, it is void as to creditors. In such case, although the mortgagee takes possession of the goods under the mortgage before the validity of the mortgage is attacked, yet the mortgage is affected by the original fraud. The case of *Hart* v. *Western Union Telegraph Co.*, on the question of the liability of the company for damages arising from error in the transmission of messages caused by negligence or incompetence of employes. The company held liable unless error occurs through some cause beyond their control.

THE AMERICAN LAW REGISTER for Jan-

uary, contains an elaborate article on *the rights to alimony after divorce*, by J. F. Kelly, in which he discusses with great clearness the question whether alimony is an incident of divorce and can only be granted by the court which granted the divorce or, whether it may also be considered a subject of original jurisdiction *per se* and can be obtained in an independent proceeding. Also the case of *Foaks* v. *Beer*, in the English House of Lords, in which it is *held* that an agreement between judgment debtor and creditor, that in consideration of the debtor paying down part of the judgment and costs and the balance in installments, the creditor will not take any proceedings on the judgment, is, *nundum pactum*, being without consideration. Also the case of *Dodd* v. *Jones*, Supreme Court of Massachusetts, in which it is *held* that a contract to assign an insurance policy to the purchaser of the insured property is a contract of sale, and for breach of the contract the measure of damages is the amount which it would cost to insure the property for the like amount for the time it had to run, and not the value of the house. *Singer Mfg. Co.*, v. *King*, in the Supreme Court of Rhode Island, where the defendant, by order of his principal received through a fellow servant, held a machine belonging to plaintiff on a claim of storage, which was ill founded, but in good faith, and refused to deliver it to plaintiff on demand. *Held*, that defendant was liable. Also the case of the *Conn. Mutual Life Ins. Co* v. *Union Trust Co.*, in the Supreme Court of the United States, in which it is *held* that under the statutes of New York any information obtained by a physician or surgeon "duly authorized to practice physic or surgery shall not be allowed to disclose the same if obtained in a professional capacity, as necessary to enable him to act intelligently in the treatment of the case." Also *Commonwealsh* v. *Pomphret*, in Supreme Court of Massachusetts, in which it is *held* that when a club own a stock of liquors, to be delivered by the steward to the members only, upon checks previously obtained from him at five cents each, the steward is not liable for an illegal sale of liquor.

SUPREME COURT OF ILLINOIS.

Head notes to opinions filed at Mt. Vernon, and prepared by Hon. Norman L. Freeman, official reporter, to appear in his reports.

17–12. — The Attorney-General *v.* The Chicago & Evanston Railroad Company. (Opinion by Scholfield, J. affirming.) Filed at Mt. Vernon, Nov. 13, 1884.

1. Quo Warranto.—Making rule absolute. — When the facts relied upon in an answer to a petition for leave to file an information in the nature of a *quo warranto* are disputed, or new and doubtful questions of law are involved, requiring time for a satisfactory solution, it is the duty of the court to make the rule for an information absolute, to enable a full investigation, otherwise the court on motion may discharge the rule and dismiss the petition.

2. Corporations — Forfeiture of franchise— Mode for ascertaining.— A cause of forfeiture of a franchise can not be taken advantage of, or enforced against a corporation collaterly or incidentally, or in any other mode than by a direct proceeding for that purpose against the corporation.

3 Same.—Jurisdiction of equity to enjoin unauthorized acts.— When a corporation has ceased to exist and is absolutely dead in law, a court of equity has jurisdiction to enjoin threatened acts by persons assuming to act on behalf of and in the name of the dead corporation.

4. And if a valid corporation assumes to exercise licenses or powers by virtue of an invalid ordinance of a municipal corporation, or in excess of authority legally conferred upon it, a court of equity, upon a proper showing, has jurisdiction to interfere and restrain it.

5. Former Adjucation — Its effect when the same question is again presented.—If a court having jurisdiction of the parties and subject-matter makes a decision upon the merits as to questions of law or of fact, its judgment or decree will be conclusive upon

such questions in any subsequent suit between the same parties.

6. So, when the Attorney-General on behalf of the People filed an information in chancery against two railway companies to restrain such companies from building and operating their road within a city, etc., alleging various grounds for the relief sought, which bill, on a hearing after answer, was dismissed, the court in its decree finding in favor of the rights claimed by the railway companies, it was *held* that such decree was conclusive upon the people in an application on behalf of the people to file an information in the nature of a *quo warranto* seeking to call in question the right of one of the same companies to exercise the same franchises and perform the same acts as were attempted to be enjoined in the prior suit.

7. Same — Grounds of judgment — Presumption.— When a bill seeks to enjoin the performance of certain threatened acts on several distinct grounds, and the court denies all relief and dismisses the bill on the merits, it must be taken that each and every specific ground alleged as cause for relief was considered and held insufficient, and the decree will be a bar to the investigation of each of such grounds in any subsequent suit against the same or either one of the parties.

8. When any specific fact or question has been determined in a former suit, it will conclude the parties from raising the same question in a subsequent suit, if properly pleaded, without regard to whether the cause of action is the same or not. This rule is not limited to matters necessarily involved in the prior litigation, but it is equally applicable, whether the point was itself the ultimate vital point or only incidental, but still necessary to the decision of that point.

41–33.—The Chicago, Rock Island & Pacific Railway Company, *v.* Oliver N. Smith. (Opinion by Sheldon, J. reversing and remanding.) Filed at Ottawa, Nov. 17, 1883.

1. Deed.—For right of way construed—Grant by implication.—The owner of a twenty-acre lot, being desirous for the construction of a railroad, made a deed to the railroad company, reciting that "in consideration of the premises, and sixty dollars," he granted, "for the purpose of constructing a railroad, and for all purposes connected with the construction and use of said railroad," the right of way for the same 100 feet wide through the lot and other property, "to have, hold and enjoy the land described, with the appurtenances, unto the said" grantee "and its assigns forever for all uses and purposes or in any way connected with the construction, preservation, occupation and enjoyment of said railroad," with a proviso for a reversion in case the same should cease to be used for railroad purposes: *Held*, that as the casting of smoke, cinders, ashes, sparks of fire, and the shaking of the soil upon other parts of the lot, was a necessary incident of the railroad, and inseparable from the running of trains upon the railroad, the right to do these acts passed to the grantee and its successors by necessary implication from the express grant.

2. Same.—What passes by implication.—When anything is granted, all the means to attain it, and all the fruits and effects of it, are granted, also, by presumption of law, and will pass inclusive, together with the thing by the grant of the thing itself, without the words *cum pertinentis*, and any like words.

3. Same —Of right of way —Increased future uses.—The grant of a right of way over his land by a party to a railway company, "for *all* uses and purposes, or in any way connected with the construction, preservation, occupation and enjoyment of said railroad," is broad enough to embrace all uses for railroad purposes, however much increased, and by any other companies authorized by law. If such grantee company consolidates according to law with other companies, and thereby greatly increases the use of the right of way, the owner or his grantee of adjoining lots can not recover damages caused by such increased use.

4. Recording Law.—Record of deed—Notice to subsequent purchaser.—The record of a deed from the owner of land grant-

ing a right of way over the same 100 feet wide, for any and all railroad purposes, which injuriously affects other portions of the land adjoining the right of way, is notice to any subsequent purchaser of adjoining lots of the grantee's rights, and such purchaser will occupy no better position than his vendor or grantor.

5. Eminent Domain—Effect of condemnation—Embraces future damages.—Where a right of way is condemned for public use through a tract of land, the owner will be entitled to compensation not only for the value of the land taken, but also for all the damages to the residue of the tract, past, present, and future, which the public use may thereafter reasonably produce.

6. Right of Way—Presumption as to deed granting.—Where a person conveys a right of way over his land it will be conclusively presumed that all the damages to the balance of the land, past, present, and future, were included in the consideration paid him for his conveyance, the same as an assessment of damages on a condemnation would be presumed to embrace.

7. Conveyance — Right of grantee to make a nuisance.—A mere conveyance of part of tract of land may not give the grantee the right to make any use of the part granted which will injuriously affect the remaining portion; but when the grant is expressed to be for a particular use neither the grantor nor one claiming under him can object to such use, and recover damages resulting therefrom.

8. Eminent Domain — Petition — Statement of uses to be made.—It is not necessary that a petition for the condemnation of a right of way over a tract of land for a railroad should state the petitioner's purposes fully and completely, giving the number of tracks and a purpose to allow other companies to use the same. It is sufficient for the petition to show generally that the land is needed for railroad purposes.

Appeal from the Appellate Court for the First District; heard in that court on appeal from the Superior Court of Cook county, the Hon. Elliott Anthony, Judge, presiding.

SUPREME COURT OF ILLINOIS.

Filed at Ottawa, June 13, 1884.

Raber v. *Gund.*

HOMESTEAD—ITS MEASURE AND EXTENT AS TO TRACT OF LAND—NATURE OF INTEREST IN WHICH THE RIGHT MAY EXIST—APPLICATION OF SURPLUS MONEY ARISING FROM SALE.

Appeal from the Appellate Court for the Second District; heard in that court on appeal from the Circuit Court of Stephenson county; the Hon. Jos. M. Bailey, Judge, presiding.

Mr. U. D. Meacham, for the appellant.

Mr. J. A. Crain, for the appellee.

Mr. Justice Scholfield delivered the opinion of the court:

This was an action of assumsit, by appellant, against appellee, for money had and received by the latter to the use of the former.

Appellant, being the owner of a farm of six hundred and forty acres, in July, 1871, he and his wife conveyed an eighty thereof, (being two forties lying north and south of each other), *in trust*, to Black, to secure the payment of certain promissory notes to Flanagan, and relinquished therein all rights of homestead. In January, 1877, appellant and his wife conveyed the remaining tracts of land in the farm, *in trust*, to Taylor, to secure the payment of a promissory note to Kleckner; but this deed was afterwards satisfied by a sale of a part of the lands, and it is not connected with the the questions arising in this case. On the 20th of October, 1877, appellee recovered four judgments, and on the 7th of December of the same year a fifth judgment, against appellant, in the Stephenson Circuit Court. Executions were issued on these judgments, and in June, 1878, the sheriff levied them on the south forty conveyed in the trust deed to Black, and on the 29th of June, 1879, by virtue of such levy, he sold this forty to ap-

pellee, still leaving a balance due on the execution, and executed to him a certificate of purchase therefor. On the 20th of September, 1879, Black sold the eighty so conveyed to him, to satisfy the debt due to Flanagan, selling the north forty first. The appellee became the purchaser of both tracts at that sale, paying the trustee, on that account, $1,891.03, which overpaid the amount due Flanagan by $408.79. Appellee produced his certificate of purchase, and claimed this excess by virtue thereof, and it was paid to him by the trustee. No redemption was made by appellant. This suit is to recover this $408.79 so paid by the trustee to the appellee. The jury, under instructions of the court, found for appellee, and the court, after overruling a motion for a new trial, gave judgment thereon, and that judgment was affirmed on appeal to the Appellate Court for the Second District. Appellant brings the record here by appeal from that judgment.

The Circuit Court, of its own motion, instructed the jury as follows:

"This is an action for money had and received, brought by the plaintiff, against the defendant, to recover a sum of money constituting, as it is claimed, the surplus arising from the sale of certain lands under a deed of trust, after satisfying the amount secured by the deed of trust, and the costs and expenses of the sale. It will be your duty to determine, from all the evidence in the case, whether said money has been received by the defendant, and whether he ought, in justice and equity, to pay it over to the plaintiff. In determining these questions, it will be your duty to be guided by the rules of law laid down in the instructions given you by the court. The plaintiff claims said money as being a part of the avails of his estate of homestead in the premises covered by said deed of trust, while the defendant claims it by virtue of a levy upon the land out of which said surplus arose, and a sale of said land, under certain judgments and executions against the plaintiff. By the laws of this State, every householder having a family is entitled to an estate of homestead, to the extent of $1,000 in the farm or lot of land and buildings thereon, owned or rightfully possessed, by lease or otherwise, and occupied by him as a residence. If you believe, from the evidence, that at the date of the deed of trust to Black, read in evidence, the plaintiff was the owner in fee of the land described therein, and that he was then a householder having a family, and in the possession and occupancy of said land as a residence, he was entitled to an estate of homestead therein to the extent of $1,000. And if you further believe, from the evidence, that the plaintiff, together with his wife, made, executed, and acknowledged said deed of trust, then you are instructed that by said deed of trust the plaintiff waived and released his estate of homestead in said land, and was precluded from setting up said estate of homestead as against said Black, or the holder of the promissory note secured by said deed of trust. And if you further believe, from the evidence, that said Black, afterwards, in pursuance of the power contained in said deed of trust, advertised and sold said land at public vendue, for default in payment of said promissory note, and that at said sale the defendant became the purchaser of said land, then the defendant took the title to said land free from said estate of homestead. And, if you further believe, from the evidence, that the defendant recovered against the plaintiff the judgments in favor of the defendant, and against the plaintiff, read in evidence, and that said judgments were severally recovered on the days on which they respectively bear date, then said judgments became, from and after the date of their recovery, liens upon said lands, subject to said deed of trust, and also subject to said estate of homestead. And, if you further believe, from the evidence, that the plaintiff occupied the north half of said land as his residence, and that his dwelling house and all other buildings and improvements appurtenant thereto were situated thereon, and that the north half of said land largely exceeded $1,000 in value, and that

the defendant caused executions on his judgments to be issued to the sheriff of Stephenson county, and to be levied upon the south half of said land, and that said sheriff thereupon sold said south half of said land upon said executions, and that at said sale the defendant became the purchaser, and received from the sheriff the certificate of purchase, read in evidence, and that said Black afterwards advertised said land for sale under said deed of trust, and on making sale in pursuance of said notice, voluntarially, of his own accord, offered the north half of said land for sale first, and sold the same for the sum of $1,600, and that said sum not being sufficient to satisfy said promissory note and the costs of sale in full, then offered for sale the south half of said land, and sold it for the sum of $700, and that said last mentioned sum, after paying the residue of said note and the costs of sale, left a surplus in the hands of said Black of $408.79 —then said surplus belonged to defendant, and not the plaintiff, and you should so find by your verdict."

Complaint is also made of the refusal of the court to give certain instructions asked by the appellant; but we agree with the view expressed by the circuit judge in overruling the motion for a new trial—that if this charge is correct, those instructions were properly overruled.

We are of opinion there is no substantial error in this ruling of the court. The evidence shows the north forty acres was in fact the homestead of the appellant. The dwelling house, and all the other buildings, the garden, the orchard, and "all the homestead improvements," were upon it, and it exceeded in value $1,000. The south forty was simply a part of the farm of six hundred and forty acres, and was in nowise differently connected with the north forty than was the forty lying east of that forty. We said in Gardener, et al., *v.* Eberhart, et al., 82 Ill., 321: "A farm may, as in this case, consist of several lots of ground, but the statute exempts only the lot so occupied. The court will take judicial notice of the government surveys of the public lands, and that a quarter section of land consists of four forties, each with well defined bounds. If the forty on which the residence buildings are situated, does not exceed $1,000 in value, it is exempt. (Hill *v.* Bacon, 43 Ill., 478.) It seems to follow that if the forty so occupied did exceed the value of $1,000, the other three forties, or either of them, could be levied upon and sold without violation of the debtor's right of exemption." The same doctrine has been, in substance, previously announced in Hill *v.* Bacon, therein cited, and in Aldrich et al., *v.* Thurston, 71 Ill., 324.

We know of no reason why the trustee might not sell the homestead forty first, that can be available in this action. The deed to him conveyed the legal estate, and the power vested in him was broad enough to authorize it, and no equitable proceedings were interposed to prevent it. It follows, then, inasmuch as the homestead forty did not sell for enough to satisfy the deed of trust, the sale of the south forty was unaffected by the claim of homestead. The balance, therefore, in the hands of the trustee after satisfying Flanagan, was properly paid to appellee, by virtue of his certificate of purchase.

The judgment is affirmed. Judgment affirmed.

SUPREME COURT OF MICHIGAN.

EQUITY JURISDICTON—OBSTRUCTION OF ROADWAY—NO ADEQUATE REMEDY AT LAW. —Defendant and plaintiff being owners of tracts of land which were separated by the town line and a roadway having been established three rods wide, along the town line, of which roadway the town line was the center, the roadway to be used in common by both plaintiff and defendant as means of ingress and egress to their farms; the defendant extends his fence to the center of said roadway thereby obstructing the same. The plaintiff brings this bill in equity for relief rom the injury and wrong sustained. *Held*, that the wrong complained of is a proper subject of equitable jurisdiction; that plain-

tiff had no adequate redress at law. The decree affirming the right of plaintiff to the unobstructed use of the roadway is affirmed.—*Nye* v. *Clark*—(Campbell, J.)—Filed January 14, 1885.

NAVIGABLE STREAM—OBSTRUCTION BY ERECTING A BOOM—DAMAGE.—Where lumbermen or persons running logs in a navigable river, obstruct the stream so as thereby to hinder or delay the passage of boats or vessels they are liable for damages therefor, and although it may be a custom among lumbermen to do so at certain seasons of the year, yet where a boat has been delayed and the owner suffers damages thereby such obstruction is *held* to be a private nuisance and recovery may be had.—*Gifford* v. *McArthur*—(Sherwood, J.)—Filed January 14, 1885.

PROMISSORY NOTE—SIGNATURE OBTAINED FRAUDULENTLY—RIGHT OF INNOCENT HOLDER FOR VALUE.—Defendant was solicited to insure his barn, and agreeing to do so signed a note for the premium agreed upon. Thereupon the agent presented to him for his signature a paper which he alleged was a formal application for insurance to be sent in to the home office of the company. The defendant signed the supposed application without reading it, his sight being defective. The supposed application was in reality a promissory note for the sum of $150. The plaintiff subsequently bought this note in good faith, for value, and upon refusal of defendant to pay this action is brought. *Held*, that plaintiff can not recover. Cases cited: Gibbs *v.* Linabury, 22 Mich. 479; Anderson *v.* Walter, 34 Mich. 114. The rule seems well settled that nothing but negligence or fault can make a person liable for the wrong use of his signature.—*1st Nat. Bank* v. *Deal*.—(Campbell, J.)—Filed January 14, 1885.

BRIDGES—OBLIGATION AND DUTY OF TOWNSHIP TO KEEP IN SAFE CONDITION—DAMAGES.—It is the general duty of township officers to keep the bridges in their highways in a safe condition and where a bridge has stood a long time, or for other reasons has become unsafe, township officers are inexcusable for not taking notice of its condition. In such case, upon trial in an action for damages, the negligence of the township through its officers can not be established by admission of a commissioner to third parties. It is only necessary for an injured party to show by proper testimony that the officers had knowledge of the unsafe condition or knowledge of such a state of facts as would reasonably make it their duty to examine and take such steps as to protect the public from danger.—*Stebbins* v. *Township of Keene*.—(Sherwood, J.)—Filed January 14, 1885.

SUPREME COURT OF MINNESOTA.

MORTGAGE—FIXTURES IN A BREWERY.—The owners of a brewery in February, 1881, executed a mortgage on their premises to plaintiff. In February, 1883, the same parties executed a chattel mortgage on certain property to-wit: Rotary pump, the swimmers, ice tools, pitching machine and kettle. Also on forty-seven large coops, casks or hogsheads, used for holding and storing beer, twelve fermenting tubs and one copper cooler, to defendant, Baxter. In this case the question is raised whether above enumerated articles are chattels or fixtures which pass with the freehold. *Held*, that they are chattels and under the chattel mortgage the title to them passes to the mortgagee.—*Wolford* v. *Baxter*—(Mitchell, J.)—Filed Dec. 18, 1884.

PRINCIPAL AND AGENT—AUTHORITY OF SUB-AGENT—NO RIGHT TO WAIVE COMMISSIONS.—Plaintiff having in charge the sale of some land for defendant agreed with one Bradford, to divide commissions with him if he would assist in finding a purchaser for the land. Bradford did find a purchaser and by arrangement with the defendant, the owner of the land, agreed to waive all commission. The sale being consumated the plaintiff brings this action to recover his commission. *Held*, that the sub-agent, Bradford, had no

Greeley, see Garnett.
Greenleaf, W. P. Mudgett.
Grinnell, see Hays City.
Harts Mills, See Sedan
Haynsville, See Pratt.
Hays City, C. W. Reeder.
Herndon, see Atwood.
Halstead, see Newton.
Harper, Sam. S. Sisson.
Hartford, see Emporia.
Harveyville, see Alma.
Hepler, See Girard.
Hillsboro, see Marion Centre.
Hillsdale, see Paola.
Holton, Hayden & Hayden.
Humboldt, G. A. Amos.
Hunnewell, See Wellington.
Huron, see Atchison.
Hutchison, Zimmerman & Taylor.
Independence, J. B. Ziegler.
Ionia, see Mankato.
Iuka, See Pratt.
Jewell City, see Mankato.
Kingman, William Green.
Kansas Centre, see Lyons.
Kansas City, see Wyandotte
Key West, see Burlington.
Kinsley, See Dodge City.
Kirkfield, See Dodge City.
Laudell, see Atwood.
Lawrence, R. J. Borghalthaus
Laura, see McPherson.
La Cygne, J. V. Donaldson.
La Fountain see Neodesha.
Leabo, see Burlington.
Leavenworth, J. D. Shafer.
Lehigh, see Marion Centre.
Lenora, see Norton.
Leon, see Eldorado.
Le Roy, see Burlington.
Lincoln and all other towns in Lincoln Co. — Lou A. Minx
Lindsburg, see McPherson.
Linn, see Clifton.
Little River, see Ellsworth
Lima, See Greenleaf.
Liberty, see Independence
Little River, see Lyons.
Longton, see Howard.
Louisburg, see Paola.
Louisville, R. S. Hick.
Lyons, J. W. White.
Madison, see Eureka.
Mankato, Wm. Metcalf.
Marion, see Marion Centre.
Marion Centre, L. F. Keller.
Maud. See Kingman.
Mount Nebo, See Pratt.
Murdock, See Kingman
McPherson, D. P. Lindsay.
Motor, see Stockton.
McCune, See Girard.
Milan, See Wellington.
Moline, see Howard.
Monmouth, See Girard.
Monrovia, see Atchison.
Mulvane, See Wellington.
Muscotah, see Atchison.
Neodesha, see Fredonia.
Neosho Rapids, see Emporia.
Newark, see Neodesha.
Newton, Bowman & Buhecr
Netawaka, see Holton
New Cumbria, see Salina
Nickerson, see Hutchison.
Northfield, see Wellington.
Omro, see Mankato.
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Ottawa, Enoch Harpole.
Onaga, see Louisville.
Oneida, see Seneca.
Opolis, See Girard.
Osage Mission, see Erie.
Osawatomie, see Paola.
Oswego, Jess. Brockway
Ottumwa, see Burlin.
Oxford, See Wellington.
Palmer, see Greenleaf.
Paola, J. E. Wright.
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Raymond, see Lyons.
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Stafford, See St. John.
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Wallace, see Hays City.
Wano, see Atwood.
Washington, See Greenleaf.
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Waubunsee, see Alma.
Waterloo, see Kingman.
Windom, see McPherson.
Waverly, see Burlington.
Webster, see Stockton.
Welda, See Garnett.
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Westphalia, see Garnett.
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Wilson, see Ellsworth.
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Whitney, see Holton
White City, see Council Grove
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they were so published to have the meaning and effect alleged. *Held* further, that where such action is brought against a newspaper company and against a defendant in his individual capacity it is not sufficient to aver that the defendant is the principal owner of the newspaper, but it must contain the averment that defendant controls said paper and is individually responsible for its contents.—*Simonson* v. *Herald Co.*—(Lyon, J.)—Filed Dec. 16, 1884.

ESTATE OF DECEDENT—DOWER—QUESTION OF VALIDITY OF MARRIAGE OF DECEDENT ON APPLICATION FOR LICENSE TO SELL. Where an administrator of an estate files a bill *quia timet* to clear the title to real estate of a claim of dower by the widow of decedent, on the ground that the said claimant was not the lawful wife of the decedent, a general demurrer to the bill will be sustained. The question of the validity of such a marriage might be raised under an application by the administrator for license to sell real estate for the purpose of paying the debts against the estate.—*Paige, Adm'r.* v. *Fagan*—(Cole, C. J.)—Filed Dec. 16, 1884.

SUPREME COURT OF NEW JERSEY.

BOUNDARY—PRACTICE—DETERMINATION OF BOUNDARY. Where no monuments are named in the grant and none are intended to be afterward designated as evidence of the extent the distance stated in the grant must govern. See Tyler on Boundaries, 29. In Chenoweth *v.* Haskell's, Lessee 3, Pet. 92, 96. Justice Marshall said: "If a grant be made which describes the land granted by course and distance only, or by natural objects not distinguishable from others of the same kind, course and distance, though not safe guides, are the only guides given, and must be used.—*L. V. Railroad Co.* v. *McFarland*—(Depue, J.)—15 Vroom's Reports.

MUNICIPAL BONDS SOLD BY TREASUER AND THE FUNDS APPROPRIATED TO HIS OWN USE RIGHTS OF A BONA-FIDE HOLDER FOR VALUE.—Where municipal bonds regularly issued and sold by the treasurer to a party for value, and absconds with the preceeds, it is no grounds of defense by the corporation. There is no rule of law better settled than that which affirms the title of a *bona-fide* holder for value of negotiable paper without regard to how the party who transfers it come into possession. Otherwise when the paper is tainted with fraud in its inception which renders it null and void.—*Copper* v. *Jersey City*—(Van Syckel, J.)—15 Vroom's Reports.

U. S. CIRCUIT COURT, DISTRICT OF MINNESOTA.

December Term, 1884.

Niskern v. *C. M. & St. P. Railway Co.*

NEGLIGENCE—SPARKS FROM A LOCOMOTIVE—DESTRUCTION OF PROPERTY BY FIRE—LIABILITY OF RAILWAY COMPANY.

Charge to jury orally.—Nelson, J.: This case of one of considerable importance. The questions presented are those peculiarly and eminently the province of a jury to decide. They are issues of fact. The law applicable to the facts of this case, I think is quite simple. I am satisfied you will investigate these issues without prejudice or sympathy, and solely with a view of arriving at the truth. The case is an important one, and I have given both parties full opportunity in the examination of their witnesses to present all the facts so as to enable you to arrive at the truth. You have patiently and attentively listened to all of the evidence, and I have no doubt you will be able to give a satisfactory and conscientious verdict.

The plaintiff, Martin Niskern, in 1879, owned a hotel in which he resided, and outbuildings, including a livery stable and barn situated in the village of Farmington in the State of Minnesota. On the night of November 22d of that year all the buildings and contents, valued at $6,408, were destroyed by fire. The plaintiff brings this action against the defendant, the railroad company,

to recover compensation for the loss, and charges that the fire was caused by the negligence of the defendant. Niskern's real property on which the buildings were located, adjoining on the east the land owned by the defendant, who operated a railroad running north and south through its land.

The defendant also operated a railroad running nearly east and west, which crossed its north and south road some distance north of the point where Niskern's land joined the defendants, and by a V track both roads were connected, which enabled trains to pass from one track to the other. On the night of the fire, about 9 o'clock in the evening, a train came up from the east and passed onto the track running north and south of the company's land west of Niskern's property, and the locomotive was operated on the tracks running north and south, the depot being there, and the company's wood and water tank. It is claimed by Niskern that while the locomotive was on one of the tracks running north and south, a stack of cornstalks piled up against his barn was set on fire by sparks or coals communicated to it from this locomotive, by the negligence of the company. The defendant was in the performance of its authorized and chartered privileges in running this train; so you will perceive that the gist of this action is negligence, an alleged failure to perform a duty which it owed the plaintiff.

The first question to be determined by you is this: Did the sparks or coals emitted from this locomotive of the defendant set fire to the plaintiff's property? An answer to this question in the affirmative is vital to the success of the plaintiff.

Your decision on this issue, if in the negative, settles the controversy; the burden of proof is upon the plaintiff, that is, upon Niskern, to satisfy you by a fair preponderance of the evidence that the fire, which he claims started in the cornstalks which were piled up against the barn, came from the locomotive. If the sparks from this locomotive, whether from the smoke-stack or from the ash-pan, did not cause the fire, there is no foundation for this cause of action. To determine this first question in the case, to-wit, was the fire which destroyed this property set by sparks or coals from the defendant's locomotive, you must take into consideration all the facts and circumstances testified to, tending to throw light upon this issue.

You must judge of the credibility of the witnesses on both sides, the weight to be given to their evidence, and the probabilities of the truth of their statements, their opportunties for knowledge, their interest in the subject-matter of the suit, the manner in which their testimony is given, and every circumstance in the case which the testimony discloses. You must consider all the evidence, and all the facts and circumstances submitted to you bearing upon the this question, not only the evidence introduced by plaintiff to prove that the fire was communicated from this locomotive to the cornstalks, but also the evidence of the defendant's witnesses in regard to the probabilities of fire being communicated to the barn, and coanstalks from other sources; and after full consideration of the testimony bearing upon this issue, determine the origin of the fire, recollecting that the burden of proof is upon the plaintiff to satisfy you by the weight of evidence that the cornstalks were set on fire by the locomotive. This is the plaintiff's theory of the origin of the fire. He says that this fire was communicated from the locomotive to the cornstalks, which burned up his property. That is his theory of the case. If upon full considereration you should determine that the fire which destroyed this property was not set by defendant's locomotive, then of course the plaintiff can not recover in this action, and the defendant will be entitled to your verdict. That is the first question for you to determine.

But if after full deliberation, considering all the testimony tending to show the origin of the fire, you believe that the plaintiff by a fair preponderance of evidence has proved that the fire was communicated from this locomotive. and that the fire was started in the corn stalks piled up against the plaintiff's

barn by sparks or coals scattered or thrown from this locomotive, then you will still further consider the case in the light of the statute which I will read to you. I might here state that on this statute the plaintiff virtually rests his case.

This statute enacts, although it might be perhaps the rule without the statute, that "all railroad companies or corporations operating running cars or steam engines over roads in this State, shall be liable to any party aggrieved for all damage caused by fire being scattered or thrown from said cars or engines, without the owner or owners of the property so damaged being required to show defects in their engines, or negligenc on the part ot their employes; but the fact of such fire being so scattered or thrown shall be construed by all courts having jurisdiction, as *prima facie* evidence of such negligence or defect;" that is, if you are satisfied that the fire communicated to the cornstalks from this locomotive, then the negligence of the company is established *prima facie*, and they are not required to go any further. If the first issue is found in favor of the plaintiff in this case, then it is presumed for all purposes of the case that the company was negligent and responsible for the destruction of the property.

"Provided, that the said railroad corporation may show, upon the trial of any action, that said damages arose from the default or negligence of the party injured." This statute shifts the burden of proof from the plaintiff to the defendant, and raises a legal presumption of the defendant's negligence. It says to you, if the plaintiff in this case upon whom the burden of proof rests, has by the weight of evidence proved to your satisfaction that this locomotive set fire to and destroyed the plaintiff's property, then this locmotive is presumed to have been defective, or the employes of the company who operated it are presumed to have been negligent. As I said before the plaintiff relies on this statute; there is no direct evidence here to show to you that this engine was defective at that time, or that the engineer in charge of it was incompetent or unskillful. In other words, if the plaintiff has established to your satisfaction that fire scattered or thrown from the locomotive destroyed his property, a *prima facie* case of negligence on the part of the defendant is made out, and the plaintiff is entitled to recover compensation, unless the company proves that it did its duty in the premises, and was not guilty of negligence. The burden of proof here is upon the defendant, to show you, by satisfactory evidence, that the locomotive was properly constructed and that it was equipped with the best mechanical contrivances and inventions known in practical use at that time, which were effective in preventing the burning of private property by the escape of sparks and coals from its locomotives, and that competent and skillful employes were operating it.

The company must furnish satisfactory evidence that the locomotive was thus properly constructed and managed with all the care and caution which the circumstances required. It was not required to stop the operation of its road because the wind was blowing strong from the northwest toward the plaintiff's property at that time; nor was it required to lay up its train because it was passing through a village, where wooden buildings and private property were near its track, and exposed to fire and sparks. It performed all of its duty in the premises if the locomotive was properly equipped with the best appliances for arresting and preventing the escape of sparks or coals, and was operated with the requsite care and caution. Of course a higher degree of care was required to be exercised in passing such a town where wooden buildings are exposed, than in passing through an open country where buildings and private property would not be endangered.

In determining whether the defendant has overcome the *prima facie* case of negligence which results from the law, in case you believe the locomotive set fire to the property, you mustconsider and properly weigh all the evidence in the case which has been given you by the engineers and machinists who are familiar with locomotives, and their construction.

The defendant is required to overcome a *prima facie* case of negligence which the law raises, and it must do this by satisfying you that it performed its whole duty and did not use a defective locomotive or manage it in an unskillful manner. If upon this issue of fact you find that the company have not been at fault or negligent, then in that case, although you should believe from the evidence that the property was destroyed by fire from this locomotive, yet the plaintiff can not recover; and yet your verdict must be for the defendant. The first issue is, did the locomotive set fire to this property? If it did, has the defendant overcome the *prima facie* case of negligence which is raised by the law? If it has, then, although you find the first issue in favor of the plaintiff, still he can not recover if you find the second issue in favor of the defendant, and that entitles defendant to a verdict. But if, in your opinion, the defendant has not overcome the presumption raised by the statute, and you believe that the fire from the locomotive destroyed the property by the negligence of the defendant, then the plaintiff is entitled to a verdict unless he was also guilty of negligence which contributed to the destruction of his property.

The statute of this State makes this provision: that a railroad company may show, upon the trial of any action, that the damage arose from the default or negligence of the party injured; that is what is called contributory negligence.

The rule of the common law is, that "One, who by his negligence has brought an injury to himself, can not recover damages for it;" and this rule is enunciated and made a part of this statute, which is nothing more than the common law rule of contributory negligence. If you find that the railroad company was negligent in this case, then it is for you to decide whether the destruction of Niskern's property was occasioned entirely by the negligence or improper conduct of the railroad company, or whether he, himself, so far contributed to the destruction of the property by his own negligence, that, but for such negligence and want of care and caution on his part the property would not have burned. If the loss was occasioned entirely by the defendant's negligence, then Niskern can recover and is entitled to a verdict; but if his own want of care contributed to the destruction of his property, then he can not recover, although the defendant was negligent in the management of its locomotive. The diligence in this respect required of the plaintiff to avoid the destruction of his property by fire, scattered or thrown from a locomotive, is such care and attention that a prudent and careful man, under such circumstances, would exercise with regard to the preservation of his property from fire thrown or scattered from a locomotive. Niskern piled up against his barn, which he had never done before, a stack of cornstalks, alleged to be combustible matter, so as to endanger its taking fire from the sparks from a locomotive; and it is urged that a prudent and careful man under the circumstances, would not have done so.

While Niskern, in the use of his property, had a right to presume that the railroad company would not be guilty of negligence, and was not tequired to anticipate any negligent act or omission on its part, yet he is required to be free from fault, and has not contributed by his own negligence to the loss which he suffered.

So gentleman, it is for you to determine from all the evidence in the case whether the defendant, this railroad company, upon whom the burden of proof rests, has upou this branch of the case proved that Niskern contributed to the loss of his property by his own negligence. If he did, he can not recover; if the defendant has hot proved him to be negligent in piling the cornstalks, then, if the destruction by fire of the plaintiff's property was occasioned entirely by the defendant's negligence, the plaintiff is entitled to a verdict.

This is about all the law there is in the case. I have been requested dy counsel on both sides to deliver certain instructions to you. I think I have covered most of them in my general charge, and decline to do so.

Verdict for defendant.

Marsh & Searles and Hodson, for plaintiff.

W. H. Norris and Bigelow, Flandrau & Squires, for defendant.

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Downing, see Memphis.
Dadeville, see Greenfield.
Eagleville, see Bethany.
East Lynn, see Pleasant Hill.
Eldorado Springs, see Stockton
Eldeen, see Tuscumbia.
Elston see Jefferson City.
Emporia, see Gallatin.
Everton, see Greenfield.
Evona, see Stanberry.
Fairfax, see Rockport.

Fairfield, see Warsaw.
Fairport, see Maysville.
Florence, see Versailles.
Fredericktow, see Marble Hill.
Gallatin, Wm. C. Gillihan. Sam'l J. Brosius.
Golden City, see Lamar.
Gainsville, see West Plains.
Granger, see Memphis.
Graham, see Maryville.
Granby, see Neosho.
Greenfield, H. Merrill.
Greensburg, see Memphis.
Greenville, see Marble Hill.
Hale, see Carrollton
Hannibal, R. E. Anderson.
Hartford see Unionville
Hermitage, See Buffalo.
Higginsville, see Lexington.
Houston, V. M. Hines.
Hopkins, see Maryville.
Huntsville, John R Christian. W. T. Austin.
Iantha, see Lamar.
Iberia, see Tuscumbia.
Independence, C. S. Crysler
Island City, see Stanberry.
Jamesport, see Gallatin.
Jameson, see Gallatin.
Jerico. see Stockton.
Jefferson City, Hamilton & Fisher.
Joplin, see Carthage.

Kansas City,
HARMON BELL

Kingsville, see Holden.
Kings Point, see Greenfield.
King City, see Stanberry.
Knobnoster, see Holden.
Keener, see Poplar Bluff.
Lancaster, see Memphis.
La Belle, see Monticello.
La Grange, see Monticello.
Lathrop, see Camerron.
Lebanon, See Buffalo.
Lewistown, see Monticello.
Lexington, J. D. Shewalter.
Liberal, see Lamar.
Licking, see Houston.
Lincoln, see Warsaw.
Linn Creek, see Tuscumbia.
Linneville, see Princeton
Linneus, John B. Willcox.
Lockwood, see Greenfield.
Lowry, see Appleton City.
Lurao, see Memphis.
Marble Hill, M. R. Smith.
Marquand, see Marble Hill.
Marionville, see Pierce City
Marshfield, see Springfield.
Maysville, Henry K. Glazier.
Martinstown, see Unionville
Maryville, Ira K. Alderman.
Mendota, see Unionville.
Miami, see Carrollton.
Milford, see Lamar.
Mill Grove, see Princeton
Milton, see Rockport.
Monticello, Burnett & Marchand.
Montrose, see Appleton City.
Monroe City, see Hannibal.
Modena, see Princeton
Montevallo, see Nevada
McFall, see Stanberry.
Mt. Vernon, see Pierce City.
Mill Springs, see Poplar Bluff
Morresville, see Chillicothe.
Neeleyville, see Poplar Bluff
Neosho, L. M. Lloyd.
Nettleton, see Breckenridge.
Newark, see Eureka.
New London, see Hannibal.
New Madrid, see Bloomfield
Newtonia, see Neosho.
Norborne, see Carrollton.
Odessa, see Lexington.
Omaha, see Unionville
Osage City, see Jefferson City
Osborn, see Maysville.
Osceola, see Appleton City
Otterville, see Boonville.
Ozark, see Springfield.
Palestine, see Boonville.
Palmyra, see Hannibal.
Philadelphia, see Hannibal.
Pattensburg, see Gallatin.
Piedmont, see Marble Hill.
Pilot Grove, see Boonville.
Plattsburg, see Cameron.
Pleasant Hill, Henry Cordell.
Pleasant Mt., see Tuscumbia
Plymouth, see Carrollton.
Peidmont, see Poplar Bluff.
Pleasonton, see Princeton
Pleasant Green, see Boonville.
Potter, see Marble Hill.
Princeton, Ira B. Hyde, H. G. Orton.
Proctor, see Tuscumbia.
Purdy, see Pierce City.
Ravanna, see Princeton
Republic, see Springfield.
Richland, see Tuscumbia.
Ridgeway, see Bethany.
Ritchey, see Neosho.
Rockport, F. M. Joslyn.
Rock Prairie, see Greenfield.
Rockville, see Appleton City.
Roscoe, see Appleton City.
Rocky Mt., see Tuscumbia
Rolla, see Cuba.
Salem, see Cuba.
Sand Hill, see Memphis.
Saverton, see Hannibal.
Seneca, see Neosho.
Sedalia, see Warsaw.
Sheldon, see Nevada
Skidmore, see Maryville.
Springfield, J. P. McCammon
Spg Garden, see Tuscumbia.
Stanberry, Ed. E. Aleshire.
Steelville, see Cuba.
Stewartsville, H. S. Buck.
Stockton, James T. Farris.
Sylvania, see Greenfield.
St. Elizabeth, see Tuscumbia.
St. Joseph, Lancaster, Thomas & James.
St. Louis, 506 Olive St.,
C. P. ELLERBE.
Strafford, see Springfield.
Tarkio, see Rockport.
Tipton, see Versailles.
Trenton, R. A. De Bolt.
Tuscumbia, T. B. Robinson.
Unionville and all towns in Putnam Co., A. D. Christy
Verona, see Pierce City.
Utica, see Chillicothe.
Van Horn, see Carrollton.
Versailles, Joan D. Bohling.
Wakanda, see Carrollton,
Virgil City, see Vevada
Virginia City, see Nevada
Walker, see Nevada
Walnut City, see Butler.
Warrensburg, see Holden.
Warsaw, T. C. Chapman.
Walker, see Nevada
Waverly, see Lexington.
Webb City see Carthage.
Westboro, see Rockport.
Wheeling, see Chillicothe.
Wilmotville, see Memphis.
Wimsville, see Poplar Bluff.
Williamstown, see Monticello

MONTANA TERRITORY.

Benton, see Helena.
Bozeman, J. J. Davis.
Butte, see Helena.
Gallatin, see Bozeman.
Gardiner, see Bozeman.
Helena, Erastus D. Edgerton.
Livingston, Bozeman.
Missoula, Frank H. Woody.

NEBRASKA.

Adams, See Beatrice
Alma, see Orleans
Albion, Geo. M. Montgomery.
Arago, see Humboldt.
Arapahoe, see Beaver City.
Ayr, see Hastings.
Atkinson, see O'Neill City.
Ashland, see Wahoo
Barada, see Humboldt.
Beatrice, R. S. Bibb.
Blair, see Omaha.
Beaver City, C. B. Roberts.
Bennet, see Lincoln
Bloomington, see Red Cloud
Blue Springs, See Beatrice.
Bradshaw, see York.
Butler Stn, see Pawne City
Cambridge, see Beaver City.
Cedar Rapids, see Albion.
Cheney, see Lincoln
Cincinnati, see Pawnee City.
Clear Creek, see Wahoo
Clay Centre, see Harvard
Columbus, McAllister Bros.
Cortland, See Beatrice.
Craig, see Tekamah.
Custer, see Loup City.
Dakota City, H. D. Rogers.
Decatur, see Tekamah.
Dunbar, see Nebraska City.
Duncan, see Columbus.
Edgar, see Nelson.
Elm Creek, see Kearney.
Emerson, see Ponca.
Ewing, see O'Neill City.
Exter, see Geneva.
Fairmont, see Geneva.
Falls City, see Humboldt.
Fairfield, see Harvard
Fremont, Geo. L. Loomis
Firth, see Lincoln
Geneva, Walter V. Fifield.
Gibbon, see Kearney.
Gould, see Plum Creek.
Gothenburg, see Plum Creek.
Grafton, see Geneva.
Grand Island, O. A. Abbott
Hansen, see Hastings.
Hardy, see Nelson.
Hartington, see Ponca.
Harvard, E. J. Moger
Hastings, Dilworth, Smith & Dilworth,
Homerville, see Plum Creek
Hooper, see Fremont.
Hubbard, see Ponca.
Humboldt, E. A. Tucker.
Humphry, see Columbus.
Inman, see O'Neill City.
Jackson, see Ponca.
Juniata, see Hastings.
Kenesaw, see Hastings.
Kent, see Ord.
Loup City, C. H. E. Heath.
Lauson, see Humboldt.
Liberty, See Beatrice.
Lincoln, M. L. Easterday.
Lost Creek, see Columbus.
Lyons, see Tekamah.
Martinsburg, see Ponca.
Mission Creek, see Pawnee City.
Nebraska C'y. Albert S. Cole.
New Castle, see Ponca.
North Bend, see Fremont
North Platte, Wm. Neville.
North Loup, see Ord.
Ord, Coffin & Clements.
Oakland, see Tekamah.
Ogallala, see North Platte.
Orleans, L. H. Kent
Oxford, see Orleans

Omaha,
STOW, HAMMOND & DAY.
See Card on First Page,

O'Neill City, H. M. Uttley.
Overton, see Plum Creek.
Oxford, see Beaver City.
Palmyra, see Nebraska City.
Papillion, see Omaha.
Pawnee City, J. L. Edwards.
Phelps, Dilworth & Dravo.
Centre,
Platte Centre, see Columbus.
Plattsmouth, see Weeping Water.
Plum Creek, A. S. Baldwin.
Raymond, see Lincoln
Red Cloud and all towns in Webster and Fatnklin cos., Case & McNeny.
Roca, see Lincoln
Rulo, see Humboldt.
Salem, see Humboldt.
Scribner, see Fremont.
Shelton, see Kearney.
Sidney, see North Platte.
Stella, see Humboldt.
St. Edwards, see Albion.
St. Helena, see Ponca.
Stuart, see O'Neill City,
Superior, see Nelson.
Syracuse, see Nebraska City
Sargent, See Loup City,
Scotia, see Ord.
Taylor, see Ord.
Table Rock, see Pawnee City
Talmadge, see Nebraska City
Tekamah, E. W. Peterson.
Unadilla, see Nebraska City.
Verdon, see Humboldt.
Waco, see York.
Waterloo, see Omaha.
Wakefield, see Ponca.
Waverly, see Lincoln
Valparlso, see Wahoo
Weston, see Wahoo
Wahoo, E. S. Merritt
Weeping Water, H. D. Travis
Westerville, see Loup City.
West Union, see Loup City.
Wilber, Hastings & McGintie
Wilsonville, see Beaver City.
Wymore, See Beatrice.

NEW HAMPSHIRE.

Manchester and all towns in Hillsborough Co., Osgood & Prescott.

NEW YORK.

Albany, WILLIAM J. HILLIS.
Amsterdam, Z. S. Westbrook
Albion, see Medina.
Arcade, see Warsaw.
Attica, see Warsaw.
Bath on Hudson, see Albany.
Bath, McMaster & Parkhurst.
Binghamton, Wm. M. Crosby, Jr.
Bloomingdale, see Plattsburg
Baldwinsville, see Syracuse.
Brewerton, see Syracuse.
Broadalbin, see Johnstown
Brooklyn, WM. W. BUTCHER.
Buffalo, CLINTON & CLARK.
Camillus, see Syracuse.
Cambridge, see Whitehall.
Candor, see Owego.
Castile, see Warsaw.
Canajoharie, see Amsterdam.
Canandaigua, H. M. Field
Caroline, see Ithaca.
Cohoes, see Albany.
Corning, A. S. Kendall.
De Witt, see Syracuse.
Dryden, see Ithaca.
Duanesburgh s. Schenectady
Ellcottsville, see Salamanca.
Ellenville, see Kingston.
Elmira, Denton & McDowell
Fayetteville, see Syracuse.
Fonda, see Amsterdam.
Fort Plain, see Amsterdam.
Franklinville, see Salamanca
Fulton, see Oswego.
Gainesville, see Warsaw.
Granville, see Whitehall.
Greenwich, see Whitehall.
Glenville, see Schenectady
Gloversville, see Johnstown.
Gowanda, see Salamanca.
Goshen, see Middletown.
Greenbush, see Alcany.
Groton, see Ithaca
Holley, see Medina.
Hornellsville, Hakes & Page
Horseheads, see Elmira.
Ithaca, A. A. Hungerford.
Johnstown, Philip Keck.
Kingston and all towns in Ulster Co., Wm. T. Holt.
Lansingburg, see Troy.
Little Valley, see Salamanca
Liverpool, see Syracuse.
Lewiston, see Lockport
Lyndonville, see Medina.
Lyons, see Wolcott
Malone and all towns in Franklin Co, H. A. Taylor.
Manlius, see Syracuse.
Medina, Stanley E. Filkins.
Middleport, see Medina.
Mexico, see Oswego.
Middletown, Charles G. Dill.
Nichols, see Owego.
Niskayuna, see Schenecta.
Niagara Falls, see Lockpot.
Newark Valley, see Owego.
Northville, see Johnstown.

Oneida,
EDWIN J. BROWN.

Ontario, see Wolcott
Oswego, W. J. Smith.
Owego, Charles D. Watkins.
Palmyra, see Wolcott
Perry, see Warsaw.
Pike, see Warsaw.
Phelps, see Canandaigua.
Phoenix, see Oswego.
Port Henry, see Plattsburg.
Port Jervis, see Middletown.
Poughkeepsie, J. H. Millard
Pulaski, see Oswego.
Red Creek, see Wolcott
Rochester M. H. McMath.
Rome, see Utica.
Rondout, see Kingston.
Rotterdam, see Schenectady
Sageville, see Johnstown.
Salem, see Whitehall.
Saugerties, see Kingston.
Schenectady, J. A. De Remer.
Schoghticoke, see Troy.
Skaneateles, see Syracuse.
Staten Island, see Brooklyn.
St. Johnsville, see Amsterdam
Syracuse, Wm. P. Gannon.
Tonawanda, see Lockport

Savannah, see Wolcott
Sodus, see Wolcott
Tarrytown and all towns in W.ChesterCo. } L. T. Yale.
Ulysses, see Ithaca.
Union, see Binghamton.
UTICA, all towns in Oneida Co } SUTTON & MOREHOUSE
Warsaw, Aug. Harrington.
Watertown, all towns in JeffersonCo } E. R. BROWN.
Waverly, see Owego.
West Troy, see Albany.
White hall and all towns in Wash Co. } J. Sanford Potter.
Whitney's Point, } Binghampton.
Williamson, see Wolcott.
Wolcott, William Roe
Wyoming, see Warsaw.
Yonkers } ROBERT P. GETTY.
Getty Sqr. } all towns in Westchester Co.

NEW JERSEY.

Asbury Park, See Eatontown
Belleville, see Newark,
Belvidere, see Phillipsburg.
Blackwoodtown, see Camden
Bloomfield, see Newark.
Bloomingdale, see Paterson
Bloomsbury, see Flemington
Bound Brook, see Somerville
Boonton, see Morristown.
Camden, Herbert A. Drake.
Chester, see Morristown.
Clinton, see Flemington
Cranbury, } see New Brunswick.
Dover, see Morristown.
Eatontown, James Steen.
Elmer, see Salem.
Freehold, see Eatontown.
Frenchtown, see Flemington
Flemington, E. R Bullock
Glen Gardner, s. Flemington
Gloucester City, see Camden.
Hightstown, see Trenton.
Hackettstown, see Ph'psb'g.
Haddonfield, see Camden.
Hopewell, see Trenton.
Irvington, see Newark.
Jamesburg, } see New Brunswick.
Keyport, see Eatontown.
Lambertville, see Flemington
Little Falls, see Paterson.
Long Branch, see Eatontown
Madison, see Morristown.
Morristown, Aug. W. Cutler.
Matawan, see Eatontown.
Middlebush, } see New Brunswick.
Milltown, see NewBrunswick.
Milford, see Flemington
Millstone, } see New Brunswick.
New Brunswick, } James H. Van Cleef.
Newark, M. J. DeWitt.
Ocean Grove, see Eatontown
Passaic, see Paterson.
Paterson, Albert A. Wilcox.
Pennsgrove, see Salem.
Pennington, see Trenton.
Perth Amboy, } see New Brunswick.
Phillipsburg, Wm. M. Davis.
Plainfield, see Somerville
Princeton, see Trenton.
Raritan, see Somerville.
Rockaway, see Morristown.
Red Bank, see Eatontown.
Salem, William T. Hilliard.
So. Amboy, } see New Brunswick.
Somerville, Bartine & Griggs
Trenton, John A. Steen.
Washington, see Phillipsburg
White House, see Somerville
Woodbridge, } see New Brunswick.
Woodstown, see Salem.

NEW MEXICO.

Albuquerque, W. C. Hazledine.
Las Vegas, Columbus Moise.
Mora, see Las Vegas.
Santa Fe, and any town in Territory except Albuquerque. } Wm. Breeden

NEVADA.

Eureka, Frank X. Murphy.
Geddes, see Eureka.
Hamilton, see Eureka.
Newark, see Eureka.
Palisade, see Eureka.
Ruby Hill, see Eureka.

NORTH CAROLINA

Asheville, Davidson & Martin
Chapel Hill, see Hillsboro.
Charlotte, { H. C. Jones. R. D. Johnston.
Danbury, see Winston
Elizabethtown, { see Wilmington.
Goldsboro, J. W. Bryan.
Graham, see Hillsboro.
Greensboro, see Hillsboro.
Hillsboro, Jno. W. Graham.
High Point, see Winston
Kernersville, see Winston
Kinston, see Goldsboro.
Kenansville, see Goldsboro.
Lexington, see Winston
Mount Airy, see Winston
Roxboro, see Hillsboro.
Snow Hill, see Goldsboro.
S. Washington, { see Wilmington.
Thomasville, see Winston.
Wilmington, { McRey & Strange.
Winston, Eugene E. Gray
Yadkinsville, see Winston
Yanceyville, see Hillsboro.

OHIO.

Aberdeen, see Ripley.
Ada, see Lima.
Alliance, see Canton.
Andover, see Jefferson.
Ansonia, see Greenville.
Archbald, see Wauseon.
Arcanum, see Greenville.
Ashtabula, see Jefferson.
Austintown, see Youngstown
Batavia, R. J. Bancroft.
Barnesville, see Blaire.
Bellaire, { Gallaher & Woodbridge.
Bellefontain, E. J. Howenstine
Bellville, see Mansfield.
Bellevue, see Norwalk.
Belmore, see Ottawa.
Berlin Heights, see Sandusky
Beverly, see Marietta.
Belpre, see Maricttа.
Bloomville, see Sandusky
Bowling Green and all towns in Wood Co. } Pillars & Pillars.
Bielmore, see Ottawa.
Bluffton, see Lima.
Brilliant, see Steubenville.
Bridgeport, see Bellaire.
Bryan, Thomas Emery.
Bucyrus, see Gallon.
Cadiz, see Carrollton.
Carrollton, W. L. Handley.
Canal Winchester, see Columbus
Canal Dover see New Philla.
Canal Fulton, see Canton.
Canton, and any town in Co. { Charles R. Miller.
Castalia, see Sandusky
Catawba, see Springfield
Charleston, see Springfield

Cincinnati, 20, 21 & 22 Temple.
DAVIDSON, CONWAY & GABLER

Cleveland, 27 Blackstone Bldg., STEWART & JOHNSTON.

Clyde, see Fremont.
Columbus, Artz & Mooney.
Columbus Grove, see Ottawa.
Conesut, see Jefferson.
Crestline, see Gallon.
Dayton, Bolin & Shauck.
Defiance, Henry Hardy.
DeGraff, see Bellefontaine.
Delphos, B. J. Brotherton.
Delta, see Wauseon.
Deunison, see New Philа.
Dupont, see Ottawa

Dublin, see Columbus
Dresden, see Zanesville.
Dunkirk, see Kenton.
East Liverpool, see Wellsville
Eaton, Campbell & Gilmore.
Edenton, see Batavia.
Farmer's Centre, } see Defiance.
Elmore, see Fremont.
Fayette, see Wauseon.
Fayetteville, see Ripley.
Felicity, see Batavia.
Fincastle, see Ripley.
Forest, see Kenton.
Fostoria, see Tiffin.
Fremont, { R. P. & H. S. Buckland.
Ft. Jennings, see Ottawa
Gallon, Cummings & Blythe.
Geneva, see Jefferson.
Georgetown, see Ripley.
Glandorf, see Ottawa.
Goshen, see Batavia.
Greenfield, see Hillsboro.
Green Springs, see Tiffin.
Greenville, John Reily Knox.
Hamden Jc., see Wellston.
Hamilton, Edgar A. Belden
Hicksville, see Defiance.
Hillsboro, Olin J. Ross.
Higginsport, see Ripley.
Huron, see Sandusky
Hubbard, see Niles
Jackson, see Sandusky
Jefferson, Talcett Bros.
Kalida, see Ottawa
Kenton, T. B. Black
Lancaster, H. C. Drinkle.
La Rue, see Kenton.
Laesburg, see Hillsboro.
Letonia, see Wellsville.
Lima, Makenzie & Robb.
Lowell, see Marietta.
Leipsic, see Ottawa
Lorain, see Elyria
Lowellville, see Youngstown
Lynchburg, see Hillsboro.
Lyons, see Wauseon.
Mansfield, Cummings & McBride.
Massillon, see Canton.
Middletown, See Hamilton.
Milan, see Norwalk.
Martin's Ferry, see Bellaire
Macksburg, see Marietta.
Marietta, { Chamberlain & Hamilton.
Matamoras, see Marietta.
Millbury, see Toledo.
Minerva, see Carrollton
Middletown, see Hamilton
Mineral Ridge, see Niles
Monroeville, see Norwalk.
Moscow, see Batavia,
Mount Orab, see Ripley
Mt. Carmel, see Batavia.
Mt. Pleasant, see Stubenville.
Mt. Victory, see Kenton.
Newcomers- town, { see Coshocton
N, Lima, see Youngstown
New Philadelphia, { A. L. Neeley.
Poland, see Youngstown
Petersburg, see Youngstown
New Madison, see Greenville
New Carlisle, see Springfield
New Lisbon, see Wellsville.
New London, see Norwalk.
New Vienna, see Hillsboro
New Washington, see Gallon
Ney, see Defiance.
Niles, J N. Cowdery.
Norwalk, Wm. B. Benham.
Oak Harbor, see Fremont.
Oberlin, see Wellington.
Ottawa, W. C. G. Krauss
Oxford, see Hamilton
Perrysburg, see Bowling Gr
Pemberville see Bowling Gr.
Piqua, see Troy.
Pandora, see Ottawa
Plymouth, see Mansfield.
Port Clinton, see Fremont.
Portsmouth and any town in Scioto Co. } Moore & Newman.
Ripley, William H Sly.
Shanersville, see New Philа
Republic see Tiffin.
Rock Creek, see Jefferson.
Salem, see Wellsville.
Sandusky, Arthur Phinney
Seven Mile, see Hamilton.
Shelby, see Mansfield.
Sherwood, see Defiance.
Sidney, McKinney & Wicoff.
Smithfield, see Stubenville.
Stubenville, P. P. Lewis.
Soutth Toledo, see Toledo.
Spencerville, see Lima.
Springfield, Keifer & White
S Clairsville see Bellaire.
Swanton see Wauseon.
Sylvania, see Toledo.
The Bend, see Defiance.
Tiffin, Royer & Rickenbaugh.
Toledo, HENRY S. BUNKER.
Townsend, see Norwalk.
Troy, W. B. McKinney.
Tremont, see Springfield
Tontogany, see Bowling Gr.
Toronto, see Steubenville.
Upper Sandusky, W. F. Pool
Urichsville, see New Philа
Van Wert, H. Kemper.
Versailles, see Greenville.
Vermillion, see Sandusky
Vienna, see Niles
Wakeman, see Norwalk.
Wapakoneta, F. C. Layton.
Wauseon, H. H. & T. F. Ham
Waaren, see Niles
Westerville, see Columbus
Weston, see Bowling Green
Wellington, see Norwalk.
Wellsville, P. C. Young.
Wellston and all towns in Jackson Co. } E.B.Bingham
West Liberty, see Bellefont'n
Williamsburg, see Batavia,
Woodsfield, See Caldwell.
Woodville, see Fremont,
Wooster L. Q. Jeffries.
Worthington, see Columbus
Xenia, T. L. Magruder.
Youngstown, Rogers & Rogers
Zanesville, Munson & Adames.

OREGON.

Ashland. See Jacksonville.
Grant's Pass, see Jacksonville
Jacksonville, B. F. Dowell.
Jefferson, see Salem.
Phoenix, See Jacksonville.
Portland, Joseph Simon.
Salem, Shaw & Burnett.
Silverton, see Salem,
Stayton, see Salem.
Turner, see Salem.

PENNSYLVANIA.

Allegheny City, see Pittsburgh.
Allentown, and all towns in Lehigh Co., } Fred G. Wolfe Runk.
Altoona, Neff & Hicks.
Apollo, see Kittanning.
Ashland, see Pottsville
Athens, see Towanda
Archbald, see Scranton.
Bangor, See Easton.
Bath, See Easton.
Bethlehem. See Easton.
Beaumont, see Tunkhauock
Benezette, see Ridgeway
Berwick, see Bloomsburg
Beaver, see New Brighton
Beaver Falls s. New Brighton
Bernevile, see Reading
Bedford, John M. Reynolds
Bellefonte, { Alexander & Bower.
Birdsboro, see Reading
Blairsville, see Indiana.
Bloomsburg, C. G. Barkley.
Blossburg, see Tioga.
Blain, see New Bloomfield
Boyertown, see Reading
Bristol, see Doylestown.
Broad Top, see Huntingdon.
Brockwayville, } see Punxsutawney.
Brookville, } see Punxsutawney.
Butler, A. T. Black.
Carbondale, see Scranton.
Carlisle, S. Hepburn, Jr.
Cassville, see Huntingdon.
Catasauqua, see Allentown.
Caledonia, see Ridgeway
Cattawissa, see Bloomsburg
Culensbdrg, see Clarion
Canton, see Towanda.
Carrollton, see Ebensburg
ChambersburgJ.M.McDowell
Christiana, see Lancaster.
Centralia, see Bloomsburg
Centre Hall, see Belletonte
Chester, Orlando Harvey.
Clarion, Wilson, Jenks & Reed
Clearfield, see Curwensville.
Clarendon, see Warren
Columbia, see Lancaster
Columbus, see Warren
Confluence, see Somerset.
Conlay, see Allentown.
Covington, see Tioga.
Curwensville, Roland D. Swoope.

Darlington, see NewBrighton
Dauphin, see Harrisburg
Duncannan, s. NewBloom'fld.
Easton, Russell C. Stewart.
East Brady, see Clarion
Ebensburg, John E. Scanlan
Edinboro, see Corry.
Edenburg, see Clarion
Ephrata, see Lancaster
Elysburg, see Shamokin
Emaus, see Allentown.
Erie, Theo. A. Lamb.
Espy, see Bloomsburg
Everett, see Bedford.
Franklin, see Oil City.
FactoryvilleseeTunkhannock
Fairview, see Butler
Foxburg, see Clarion
Freemansburg, See Easton.
Fryburg, see Clarion
Freeport, see Kittanning.
Freedom, see New Brighton
Gallitzin, see Ebensburg
Green Castle, see Chambersburg
Gettysburg, D. McConaughy.
Girard, see Erie
Glendon, See Easton.
Greenville, see Sharon.
Hanover, see York.
Hollidaysburg, see Altoona.
Harrisburg, Francis Jordan.
Hamburg, see Reading
Harrisville, see Butler
Hazleton, see Wilkes-Barre.
Hellertown, See Easton.
Hemlock, see Ebensburg
Hokendauqua,see Allentown
Houtzdale, see Curwensville
Howard, see Bellefonte.
Indiana, H. K. Sloan.
Jersey Shore, see Wm'sport
Johnstown, see Ebensburg.
Karns City, see Butler
Kersey's, see Ridgeway
Kingston, see Wilkes-Barre.
Kutztown, see Reading.
Lancaster, D. G. Eshleman.
Latrobe, see Greensburg.
Laceyville, see Tunkhannock
Landisburg, s. New Bloom'ld
Lansford, see Mauch Chunk.
Lehighton, see Mauch Chunk
Lebanon, W. M. Derr.
Leechburg, see Kittanning.
Lewisburg, J. T. Baker.
Liverpool, see New Bloomfield
Lightstreet, see Bloomsburg
Lititz, see Lancaster
Lock Haven, J. R. Youngman.
Locust Gap, see Shamokin
Macungie, see Allentown.
Mansfield, see Tioga.
Marion, see Indiana.
Mahanoy City, see Pottsville
Manheim, see Lancaster
Marietta, see Lancaster
Martinsburg, see Altoona.
Mauch Chunk, Craig & Loose
McKeesport, see Pittsburgh
Meadville, and all other towns in Crawford Co, J.B.Compton
Mercersburg, see Chambersburg
Mehoopany, seeTunkhannock
Mercer, see Sharon.
Meshoppen,see Tunkhannock
Meyersdale, see Somerset.
Middlesex, see Sharon.
Monroeton, see Towanda
Mt. Carmel, see Shamokin
Milheim, see Bellefonte.
Millerstown, see Butler
Millersville, see Lancaster
Moscow, see Scranton.
Mt. Union, see Huntingdon.
Muncy, see Williamsport.
Nazareth, See Easton.
Newmanstown, see Lebanon
Newtown, see Doylestown.
Oil City, Wilmot Heard.
Oliphant, see Scranton.
Osceola Mills,see Curwens'ill
Oxford, Theo. K. Stubbs.
Parker City, see Kittanning.
Parrysville, see Mauch Chunk
Penfield, see DuBois.
Petersburg, see Huntingdon.
Phillipsburg, see Bellefonte
Pittston, see Wilkes-Barre.
Plymouth, see Wilket-Barre.
Pittsburgh, Magnus Pflaum
Philadelphia, 251 South 4th St. SAMUEL WAGNER.
Portland, See Easton.
Pottsville, Christopher Little
Punxsutawney, Winslow & Calderwood.
Renova, J. H. Ferguson.
Reading, Garrett B. Stevens
Reynoldsville, see Punxsutawney.
Ridgeway, G. A. Rathbun.
Rockwood, see Somerset.
Saltsburg, see Indiana.
Sandy Lake, see Sharon.
Scranton, T. R. Hughes.
Selin's Grove, and all towns in Snyder Co, A. W. & N. I Potter.
Shamokin, Addison G. Marr.
Sharon, John H. Elliott.
Sharpsville, see Sharon.
Shenandoah, see Pottsville.
Shippenville, see Clarion
Shelocta, see Indiana.
Shrewsbury, see York.
Smicksburg, see Indiana.
Smith'a Fy, see N. Brighton.
Somerset, Henry F. Schell.
South Easton, See Easton.
So. Bethlehem, See Easton.
Spartansburg, see Corry.
Strattanville, see Clarion
Strasburg, see Lancaster
St. Marys, see Ridgeway
Sugar Grove, see Warren
Summit Hill, see Mauch Chunk
Sunbury, S. P. Wolverton.
Tamaqua, see Pottsville
Tidiouee, see Warren
Tremont, see Pottsville
Trenton, see Shamokin
Tioga, F. E. Smith.
Titusville, See Meadville.
Towanda all towns in Bradford Co, R. A. Mercur
Troy, see Towanda
Tunkhannock, Wm. M. Platt & Sons.
Tyrone, see Altoona.
Union City, see Corry.
Ursina, see Somerset.
Warren, Johnson, Lindsey & Parmlee.
Warrior's Mark, see Huntington.
Waterford, see Corry.
Watsontown, see Sunbury
Waynesboro, see Chambersburg
W.Bridgewaters, N. Brighton
Weatherly, see Mauch Chunk
Welsport, see Mauch Chunk.
Wilcox, see Ridgeway
Wilkes-Barre, L. W. De Witt.
Williamsport, H. T. Ames.
Wellsboro, see Tioga.
West Middlesex, see Sharon.
Wrightsville, see York.
York, A. N. Green.
Youngsville, see Warren

RHODE ISLAND.

Bristol, see Providence.
E.Greenwich, see Providence
Kingston, see Providence.
Newport, see Providence.
Pawtucket, see Providence.
Providence, W. W. & S. T. Douglas.
Warren, see Providence.
Westerly, see Providence.
Woonsocket, see Providence

SOUTH CAROLINA.

Abbeville, Perrin & Cothran.
Alston, see Winnsboro.
Beaufort, W. I. Verdier.
Blackstock, see Winnsboro.
Blythewood, see Winnsboro.
Branchville, see Orangeburg
Chappells, see Newberry.
Charleston, Smythe & Lee.
Darlington, E. Keith Dargan
Edgefield, see Newberry.
Columbia, Rion & Barron.
Greenwood, see Abbeville.
Greenville, Isaac M. Bryan.
Hardeeville, see Beaufort.
Lexington, see Newberry.
Laurens, see Newberry.
Monticello, see Winnsboro.
Mt. Pleasant, see Charleston.
Ninety Six, see Abbeville.
Newberry, Geo. S. Mower.
Orangeburg, Malcom I. Browning.
Prosperity, see Newberry.
Port Royal, see Beaufort.
Ridgeway, see Winnsboro
Shelton, see Winnsboro.
St. Matthews, see Orangeburg
Rowesville, see Orangeburg.
Spartanburg, J. S. Thomson.
Summerville, see Charleston.
Sumter Blanding & Blanding
Troy, see Abbeville.
Union, see Newberry.
Winnsboro, J. H. Rion.
Woodward, see Winnsboro.
Wallacevtlle, see Winsboro.
White Oak, see Winsboro

TENNESSEE.

Bristol, Ch s. R. Vance.
Blountsville, see Bristol.
Brownsville, E. J. & J. C. Read
Chattanooga, H. M. Wiltse.
Clinton, see Knoxville.
Columbia, E. C. McDowell.
Daneyville, see Brownsville.
Dandridge, see Knoxville.
Dresden, John McGlothlin.
Dyersburg, S. R. Latta.
Elizabethton, see Bristol.
Finlay, see Dyersburg
Fowlkes, see Dyersburg
Franklin, see Columbia.
Gardner, see Dresden.
Greenfield, see Dresden.
Gleason, see Dresden.
Henderson, see Jackson.
Jackson, McCorry & Bond.
Jonesboro, see Bristol.
Jenks, see Kingston.
Kingston and all towns in Roane Co. W.H. Dietz.
Knoxville, H. H. Taylor.
Lewisburg, see Columbia.
Loudon, see Knoxville.
Madisonville, see Knoxville.
Martin, see Dresden.
Maryville, Will. A. McTeer.
Maynardsville see Knoxville
Medina, see Jackson.
Medon, see Jackson.
Memphis, Myers & Sneed.
Morristown, see Knoxville.
Murfreesboro, C. A. Sheafe.
Nashville, T. M. Hurst.
Newbern, see Dyersburg
Palmersville, see Dresden.
Pinson, see Jackson.
Rockwood, see Kingston.
Rogersville, see Bristol.
Sevierville, see Knoxville.
Sharon, see Dresden.
Stanton Dep, see Brownsville
Taylorsville, see Bristol.
Woodville, see Brownsville
Wellwood, see Brownsville.

TEXAS.

Abbott, see Hillsboro.
Abilene, Jos. E. Ckrell.
Athens, M. E. Richardson.
Alto, see Nacogdoches.
Alvarado, see Cleburne.
Atlanta, see Texarkana.
Austin, Walton & Hill.
Axtell, see Waco.
Baird, see Sweetwater.
Big Spring, see Sweetwater.
Bells, see Denison
Belton, D. L. Russell.
Bonham, Wm. A. Bramlette.
Boston, see Rexarkana.
Burnett, see San Saba.
Brady, see San Saba.
Brownsboro, see Athens.
Brownwood, see San Saba.
Buffalo Gap, see Abilene.
Carthage, see Marshall.
Castorville, see San Antonio
Centre City, see Hamilton.
Chandler, see Athens.
Clarendon, see Vernon.
Cleburne Brown Ramsey & Crane.
Colorado, see Sweetwater.
Cortland, see Sweetwater.
Crawford, see Waco.
Creedmore, see Austin
Cuero, see Gonzalez.
Dallas, Kearby & McCoy.
Dangerfield, see Texarkana.
Denison, S. A. Gilbert
Denton, Marshall Fulton.
Doan's, see Vernon.
Dodd City, See Bonham.
DrippingSp'gs, seeS. Marcus
Du Pre, see San Marcus.
Eddy, see Waco.
Fairview, See Floresville.
Fincastle, see Athens.
Fiskville, see Austin
Flatonia, see Gonzalez.
Fredericksburg, See Mason.
Fort Worth, Robert McCart.
Galveston any town in GalvestonCo Chas L. Cleveland
Gatesville and all towns in Coryell Co., Baines & Chrisman.
Gordonsville, see Denison.
Glenrose, J. B. Early.
Gonzalez, Harwood&Harwood
Goshen, see Athens.
Grantbury, see Glenrose.
Halletsville, see Gonzalez.
Hamilton, George R. Freeman
Hillsboro, Tarlton, Jordan Tarlton.
Hemphill, see Nacogdoches.
Hico, see Hamilton.
Honey Grove, See Bonham.
Houston, Sinclair Tallaferro.
Howe, see Denison.
Hubbard City, see Hillsboro.
Hunter, see San Marcus.
Iredell, see Glenrose.
Itasca, see Hillsboro,
Jacksonville, see Nacogdoc's.
Jefferson, see Marshall.
Jonesboro, see Gatesville.
Junction City, See Mason.
Kasse, see Groesbeck.
Kaufman, see Dallas.
Kotula, see San Antonio.
Kyle, see San Marcus.
Lampasas see San Saba.
Lavernia, See Floresville.
Linden, see Texarkana.
Llano, see San Saba.
Lockhart, see Gonzalez.
Lodonia, See Bonham.
Longview, see Marshall.
Luling, see Gonzalez.
Lorena, see Waco.
Malakoff, see Athens.
Martindale, see San Marcus.
Marshall, Alex. Pope.
Mason, Henry M. Holmes.
Mastersville, see Waco.
Manor, see Austin
McGregor, see Waco.
McKinney, see Dallas,
Melrose, see Nacogdoches.
Menardville, See Mason.
Meridian, see Cleburne.
Merkle, see Sweetwater.
Mexia, see Groesbeck.
Moody, see Waco.
Mobeetie, see Vernon.
Mt. Pleasant, see Texarkana.
Murchinson, see Athens.
Nacogdoches, Robt. M. Morris
Paint Rock, see Abilene.
Palestine, Thos. B. Greenwood
Paris, See Bonham.
Pearsall, see San Antonio.
Pilot Point, see Denton.
Pittsburg, see Texarkana.
Pleasanton, See Floresville,
Pottsboro, see Denison.
Runnel's City, see Abilene.
Rusk, see Nacogdoches.
Sweetwater, Cowan & Posey.
San Augustine, see Nacogdoches.
San Marcos, Fisher & Rose.
San Saba, Yoe & Harris,
Savoy, See Bonham.
Seymour, see Vernon.
Sherman, see Denison.
Summit, see Austin
Terrell, see Dallas.
Thornton, see Groesbeck.
The Grove, see Gatesville.
Texarkana and Miller Co., Todd & Hudgins.
The Cove, see Gatesville.
Turnersville, see Gatesville.
Van Aylstine, see Denison.
Vernon, Gordon & Eggleston W. L. Gordon. J. C. Eggleston.
Wichita Falls, see Vernon.
Walnut, see Glenrose.
Waco, E. A. McKenney.
West, see Waco.
Wellsville, see Austin
Whitewright, see Denison.
Whitesboro, see Denison.
Whitney, see Hillsboro.
William's Ranch, see San Saba.

UTAH.

Corinne, see Ogden.
Ogden, Ransford Smith.
Logan, see Ogden.
TooeleCy. see Salt Lake City.
Salt Lake City. | Hoge & Burmester.
Stockton, see Salt Lake City.

VIRGINIA.

Abbott, John A. I. Lee.
Abingdon, Va., } see Bristol, Tenn.
Alexandria, Samuel G. Brent.
Berkeley, see Norfolk.
Berryville, see Winchester.
Bridgewater, s. Harrisonburg
Broadway, see Harrisonburg
Clifton Forge, see Covington
Charlestown, see Winchester
Columbia, see LouisaC. H.
Covington, James Bowler.
Culpeper, John F. Rixey.
Danville, Green & Miller.
Dayton, see Harrisonburg
Estelliville, Va., | see Bristol Tenn.
Edenburg, see Woodstock.
Front Royal, S. S. Turner.
Goodson, Va., | see Bristol, Tenn.
Gordonsville, see Louisa, C.H
Green, C.H., see Louisa, C.H.
Harrisonburg, Ed. S. Conrad.
Howardsville s.Charlotesville N. C.
Lebanon, see Woodstock.
Leesburg, J. H. Alexander
Lexington, | Letcher & Letcher.
Liberty, see Abbott.
Louisa, C. H., Wm. E. Bibb.
Low-Moor, see Covington,
Luray, see Front Royal.
Maurertown, see Woodstock.
Middletown, see Winchester.
Mt. Jackson, see Woodstock.
Mt.Crawford, s.Harrisonburg
New Castle, see Abbott.
New Market, see Woodstock
Newport, see Abbott.
Norfolk, { W. H. Burroughs / J. J. Burrough.
Orange, C.H., see Louisa, C.H
Palmyra, see Louisa, C. H.
Pearisburg, see Abbott.
PortRepublic s.Harrisonburg
Portsmouth, see Norfolk.

Richmond,

JAMES LYONS

Roanoke, see Fincastle
Salem, D. B. Strouse.
Scottsville, seeCharlottesville N. C.
Stanardsvill, see Charlottesville N. C.
Simmonsville, see Abbott.
Staunton, W. E. Craig.
Strasburg, see Woodstock.
Timberville, see Harrisonburg
Warrenton, Thos. Smith.
Winchester and all other towns in Frederick Co. } Richard Parker.
Woodstock, Walton & Walton
Wytheville, Jas. A. Walker

W. VIRGINIA.

Barboursville, seeHuntington
Grafton, J. T. McGraw.
Guyandotte, see Huntington.
Huntington, J. M. Layne.
Hamlin, see Huntington.
Middlebourne, see Sisterville
Milton, see Huntington.
Moundsville, see Wheeling
Parkersburg, D. H. Leonard.
Raven Rock, see Sisterville.
Sisterville, J. H. McCoy.
St. Mary's, see Sisterville.
Spencer, A. B. Wells.
Wayne C.H. see Huntington
Wheeling, J. J. Woods.
Wellsburg, see Wheeling

WISCONSIN.

Abbotsford, see Medford
Abnapee, see Kewaunee,
Arcadia, Higbee & Comstock
Amherst, see Stevens Point.
Antigo, see Wausau.
Antigo, and all towns in Shawano and Langlade Co's | Latta & Trever.
Argyle, see Darlington.
Ashland, see Bayfield.
Augusta, see Eau Claire.
Bangor, see LaCrosse.
Eau Tray, see Burlington
Bayfield, A. M. Warden.
Berlin, M. L. Kimball.
Belmont, see Darlington.
Beloit, see Janesville.
Bloomington, see Lancaster
Blair, see Arcadia
Boardman, see New Richmond
Boscobel, John D. Wilson.
Brillion, see Chilton.
Brothertown, see Chilton.
Burlington, E. Merton.
Cable, see Bayfield.
Carleton, see Kewaunee.
Casco, see Kewaunee.
Cassville, see Lancaster
Chelsea, see Medford
Chandler, see Hudson.
Charlestown, see Chilton.
Chilton, J. E. McMullen.
Clear Lake, see Hudson.
Clinton, see Janesville.
Colby, see Wausau.
Colfax, see Menomonie.
Cumberland, see Hudson.
Darlington, D. S. Rose.
DePere, see Green Bay.
DeSoto, see Viroqua.
Desoto, Wis., See Lansing, Ia
Dorchester, see Medford
Eastman, see Prairie Chien
Eau Claire, R. E. Doolittle.
Edgerton, see Janesville
Erin Prairie, see New Richmond.
Evansville, see Janesville.
Fall Creek, see Eau Claire.
Ft. Howard, see Green Bay.
Fifield, see Medford
Fenimore, see Lancaster
Galesville, see Arcadia
Glen Haven, see Lancaster
Glendale, see Sparta.
Greenwood, see Neillsville.
Hazel Green, see Lancaster
Hammond, see Hudson.
Hartford, see West Bend.
Haywood, see Hudson.
Hortonville, see Appleton.
Hudson, see New Richmond
Humbird, see Neillsville.
Independence, see Arcadia
Janesville, Norcross & Dunwiddie.
Jewett Mills, } see New Richmond.
Kankakee, see Appleton.
Kaukauna see Appleton
Kendall, see Sparta.
Kewanskum, see West Bend.
Kiel, see Manitowoc
Knapp, see Menomonie.
LaCrosse, Hughes & Miller.
Lancaster Bushnell&Watkins
Ledyard, see Appleton
Lodi, see Madison.
London, see Madison.
Lynxville, see Prairie Chien
Madison, Edward P. Vilas:
Malden see Medford
Manitowoc, G. G. Sedgwick
Mapleworks, see Neillsville
Mazomia, see Madison.
Menesha, see Oshkosh.
Menomonie, Geo. Shafer.
Merrill, see Wausau.
Medford, J. K. Parish
Milton, see Janesville.
Mishicott, see Manitowoc

Milwaukee,

A. G. WEISSERT

Montello, S. A. Pease.
Mosinee, see Wausau.
Monfort, see Lancaster
Muscoda, W. S. Canning.
Mondovi, see Eau Claire.
Neenah, see Oshkosh.
Newbury, see West Bend.
New Holstein, see Chilton.
New London, M. B. Patchen.
Northport, see New London.
New Richmond, { S. N. Hawkins
Onalaska, see LaCrosse.
Ontario, see Viroqua.
Oregon, see Madison.
Omro, see Oshkosh.
Oshkosh, Moses Hooper.
Oxford, see Janesville.
Paris, see Manitowoc
Royalton, see New London.
Rusk, see Menomonie.
Plover, see Stevens Point.
Plymouth, M. D. L. Fuller
Plattville, see Lancaster
Phillips, see Medford
Portsage, J. B. Taylor.
Prairie Du Chien, D. Webster
Raudom Lake, see Plymouth.
Reedsville, see Manitowoc
Rhinelander, see Wausau.
Ripon, see Fond du Lac.
Rising Sun, see Prairie Chien
River Falls, see Hudson.
Roxbury, see Medford
Rochester see Burlington
Sand Creek, see Menomonie.
Shawano, see Antigo.
Schleisingerville, see W. Bend
Seneca, see Prairie Du Chien
Sheboygan see Plymouth.
Sheboygan Falls, } see Plymouth.
Shullsburg, see Darlington.
Somerset, see New Richmond
Soldier's Grove, see Prairie du Chien.
Spencer, see Wausau.
Star Prairie, see New Richmond.
Stockbridge, see Chilton.
Tomah, see Sparta.
Two Rivers, see Manitowoc
Tunnel City, see Sparta.
Union Grove, see Racine.
Waterford, see Burlington
Wauzeka, see Prairie Chien
Waupun, see Fond du Lac.
Wausau, | Silverthorn, Hurley & Ryan
Weaugega, see New London.
West Bend, Paul A. Weil.
West Salem, see LaCrosse.
Westboro, see Medford
Whitehall see Arcadia
Wilton, see Sparta.
Winneconne, see Oshkosh.

WASHINGTON TER.

Chehalis, see Olympia.
Cheney, M. G. Barney.
Colfax, see Dayton.
Dayton, J. K. Rutherford.
Kalama, see Olympia.
La Conner, see Seattle.
Medical Lake, see Cheney.
Montazeno, see Olympia.
Oakland, see Olympia.
Oysteville, see Olympia.
Olympia, | Ballard & McFadden.
Port Townsend, see Seattle.
Pomeroy, see Dayto
Seattle, H. H. Lewis.
Spokane Falls, see Cheney.
Sprague, see Cheney.
Tacoma, see Seattle.
Waltsburg, see Dayton.
Whatcom, see Seattle.

WYOMING TERRITORY.

Cheyenne, C. N. Potter.
Evanston, see Laramie.
Green River City, seeLaramie
Laramie City, M. C. Brown.
Rawlins, see Laramie,

DOMINION OF CANADA

PROVINCE OF ONTARIO.

Alexandria, see Cornwall.
Blenheim, see Chatham.
Bothwell, see Chatham.
Belleville, see Kingston.
Berlin, see Guelph.
Brockville, see Kingston
Chatham, { Robinson, Wilson&Belcornwall.
and all other towns in Dundas, Glengary and Stormont counties. } Leitch & Pringle.
Elora, see Guelph.
Fergus, see Guelph.
Fort Erie, see St. Cathrine.
Galt, see Guelph.
Guelph, | Macdonald & Macdonald.
Hamilton, Edward Furlong
Harriston, see Guelph.
Iroquois, see Cornwall.
Kingston, E. H. Smyth.
London, | Parke, Mills & Purdom.
Morrisburg, see Cornwall.
Nappanee, see Kingston.
Niagara Falls, St. Catharines
Ottawa, } MartinO'Gara, Q.C / Edward P. Remon
Palmerston, see Guelph.
Perth, see Kingston.
Port Colborn, see St.Cathar's
Ridgetown, see Chatham.
St. Catharines, A. G. Brown
Thorold, see St. Catharines
Thamesville, see Chatham.
Wales, see Cornwall.
Wallaceburg, see Chatham.
Welland, see St. Catharines

Toronto,

39 Adelaide St.,

JAMES PEARSON

MANITOBA.

Winnipeg,

PATTERSON & BAKER.

NEW FOUNDLAND.

Saint Johns and all Towns in the Province, } John H. Boone

QUEBEC.

Montreal,

KERR & CARTER

Sherbrooke, Panneton & Mulvena, and any towns in Compton Co..... Richmond Co..... Stanstead Co..... or Wolfe Co..... } See Sherbrooke.

NEW BRUNSWICK.

St. John, Seely & McMillan

GREAT BRITAIN.

No. 1 PlowdenBuilding Temple, London, Eng.

ALBERT VAN WAGNER.

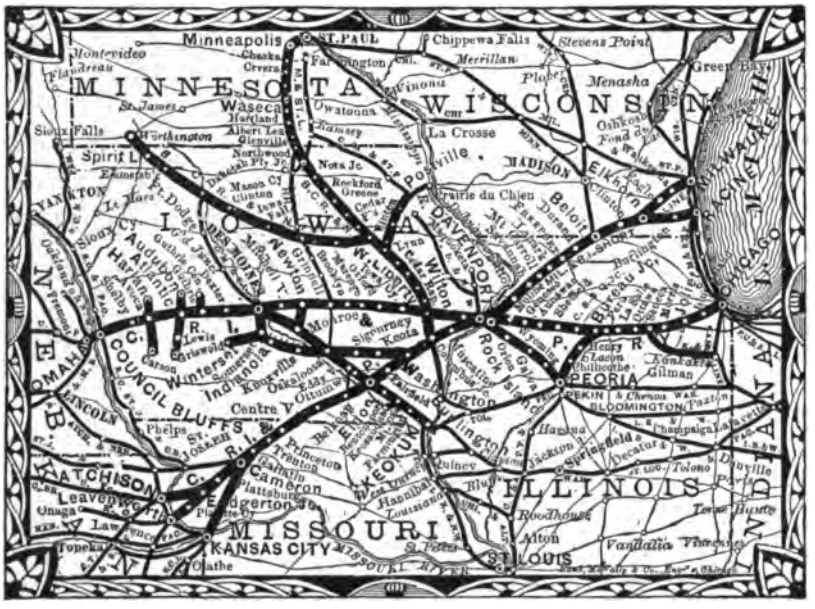
(See card 1st page.)

SCOTLAND.

Glascow, 116 St. Vincent-st. } **WM.B.PATERSON**

A MAN

WHO IS UNACQUAINTED WITH THE GEOGRAPHY OF THIS COUNTRY, WILL SEE BY EXAMINING THIS MAP, THAT THE



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Vice-Pres't & Gen'l Manager,

E. ST. JOHN,
Gen'l T'k't & Pass'r Ag't,

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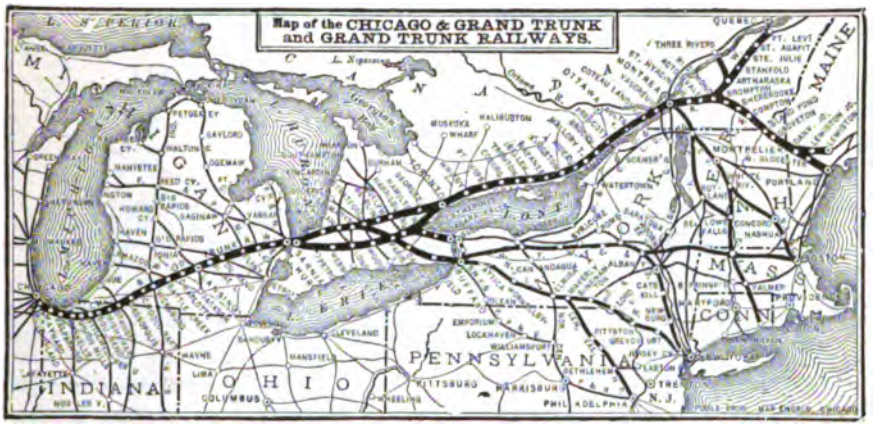
NIAGARA FALLS AIR LINE.



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AND

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They run two solid trains daily from

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IN BROAD DAYLIGHT,

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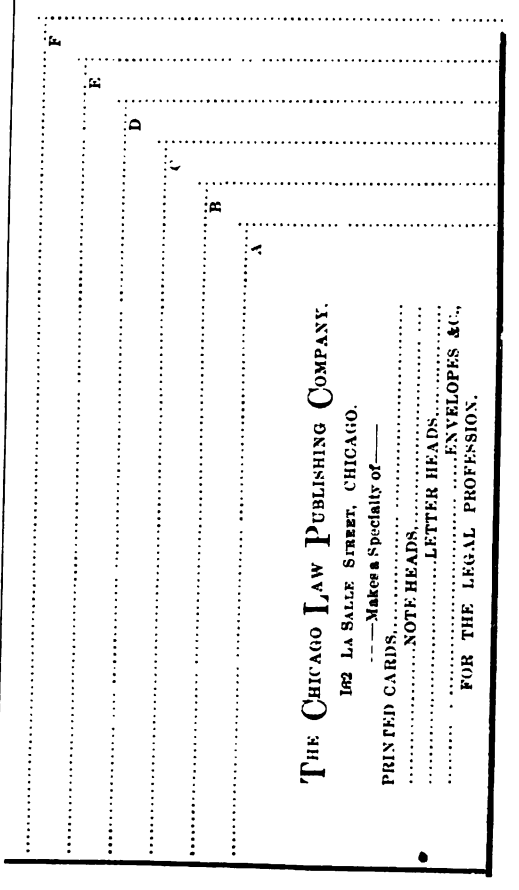

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The Chicago Law Jounral.

CHICAGO, MARCH, 1885.

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THE CHICAGO LAW JOURNAL is published on the first of each month and mailed to subscribers at the low price of $1.50 per annum, postage paid

With the December Number of the current volume of THE JOURNAL, A COMPLETE INDEX TO VOLUME VI. will be furnished to subscribers FREE.

We will continue to give from sixteen to eighteen pages of reading matter in each issue, which will consist chiefly of brief digests of recent decisions of the Court of last resort of the several states, and of the United States, carefully selected, with a view to their practical importance, REPORTED ESPECIALLY FOR THE JOURNAL, or in American Law Periodicals, giving a syllabus of each case, together with the name, page and date of the Journal or RECORD where a full report of the case may be found. The purpose is to advise our patrons of questions decided in the latest cases of importance, and HOW and WHERE complete reports of the same may be obtained.

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WE record the death of three eminent members of the bar in Illinois during the past month. Judge Pinkney H. Walker of the Supreme Court of Illinois, died at his home in Rushville on February 7th. George O. Ide, and Judge Evert Van Buren also of this city both of the Chicago bar have also passed away. Judge Van Buren died at the ripe old age of 82 having practiced his profession for fifty-eight years, the last twenty-eight of which he practiced in this city. It is permitted to few to live so long, busy and useful a life as was that of Judge Van Buren.

At a meeting of the Chicago bar held on SaturdyyFebruary 21st the following memorial resolution was presented and adopted

In the death of Judge Van Buren the community has lost an honored citizen and the Chicago Bar an eminent lawyer. He was an earnest worker—a skilled practitioner. His client's cause was his own, and in its advocacy he concentrated all his energies with admirable devotion and marked success. He was a strong advocate, a safe counselor, an upright Judge.

For half a century he battled manfully in the front rank of his profession, undismayed by the infirmities of age or the burden of labor, and in peace he ended his honorable career.

Eulogiums upon the life and character of Judge Van Buren were pronounced by Judge Rogers, Frank A. Riddle, Le Grand W. Perce, and E. J. Whitehead.

NOTES OF CASES.

WE are in receipt of Vol. 1 No. 1, of the KANSAS LAW JOURNAL, to be a weekly publication. It is full of the items of special interest to the profession in Kansas. We wish the enterprise success. This number contains an elaborate opinion by Judge Guthrie of the District Court of Shawnee county, on the question as to the right of a defendant to interpose a plea in abatement to an indictment, on the ground of irregularity in drawing and summoning the grand jury which found the indictment. Judge Guthrie supports the allegation, that to sustain a plea in abatement on such grounds is against the general trend of the law in most of the states, by citing provisions in the statutes expressly prohibiting such plea, in Mississippi, Louisiana, Texas, Alabama, and Missouri. Judge Guthrie [illegible] observations to [illegible] pinion in other [illegible] licy of the law [illegible] his plea, but [illegible] the defend-

MISSING PAGES 65-72

ant to plead to the merits of the indictment."

THE KENTUCKY LAW REPORTER for November, 1884, contains the case of *Rodman* v. *Commonwealth*, in which an appeal was taken from the Circuit Court, where conviction and sentence was had, on the ground that the jury in rendering the verdict of guilty arrived at an agreement by lot. The defendant, on this ground, moved for a new trial, which motion was overruled and from this order an appeal is taken. *Held*, that the decision of a trial court on a motion for a new trial is final and conclusive and cannot be reviewed. Also, the case of *Rooney* v. *Lievny*, in an action for slander, wherein it is *held* that defendant cannot traverse and afterwards plead the truth in justification of the libel. Also, the case of *Kentucky Central Railroad Company* v. *Barrow*, in an action for damages arising from sparks emitted from a locomotive. Also, the case of *Buford* v. *L. & N. Railway Company*, in an action for damages received in a railroad accident. Plaintiff while under the influence of opiates agreed to accept one hundred dollars and a pass to his home and release the defendant company from all further liability. The one hundred dollars was paid him and free transportation to his home, according to their agreement. After he had recovered from his injuries he sued the campany for further damages, alleging that the compromise was made under duress by reason of his financial circumstances at the time. The trial court *held* that financial straits did not constitute duress. This ruling is reversed. Also, the case of *N. W. M. Life Insurance Company* v. *Fort's Administrator*. Plaintiff below brought this action to recover on a life policy on which the premiums had been payable partly by note and partly by cash. At the time of the assured's death there was a premium overdue, and according to the conditions of the policy it was forfeited for non-payment of premium, unless saved by the surrender value of the policy which was in the hands of the company. The company claimed that the surrender value should be applied to the payment of the premium notes held against the policy, and not to continue the policy in force. *Held*, that the company was bound to apply the surrender value of the policy in their hands to the payment of cash premium. Also, the case of *Pullman Car Company* v. *Gaylord*. Gaylord, while occupying a berth in a sleeping car, had a diamond pin stolen from him. *Held*, that the company was not liable unless negligence was shown on its part.

THE AMERICAN LAW RECORD for February, contains the case of *Exchange National Bank of Pittsburgh* v. *Third National Bank of New York*, recently decided in the Supreme Court of the United States. This case, heretofore reported in this JOURNAL, was carried to the Supreme Court of the United States where the judgment of the lower court is affirmed; also, the case of *Hart* v. *Pennsylvania Railroad Company*, in the Circuit Court of the United States for Missouri, in which it is *held* that where a shipper fixed a value upon property shipped which is less than the actual value of the property, thereby getting reduced rate of freight proportioned to the value he places upon the property, he cannot in case of loss, recover from the carriers more than the value he fixed upon the property at the time of shipment; also, the case of *Hughes* v. *Dundee Mortgage etc., Company*, in the United States Circuit Court of Oregon, in which it is *held* that where work is done by one party for another without any understauding as to compensation therefor, and when the circumstances show that the work was not done with the expectation of receiving pay therefor, no contract for the service will be implied; also, digests of a number of cases lately rendered in the Supreme Court of Ohio.

WHERE a fugitive from justice is found in another state and by forcible means or otherwise, without due process of law, is taken back to the state where the crime was committed, and after being thus brought within the limits of the state, is arrested and held upon a warrant duty issued, such prisoner

cannot upon his own motion sue out a writ of *habeus corpus* and thereby obtain his discharge on the grounds of having been illegally brought within the jurisdiction of the court, but if the state of his asylum from which he was illegally taken demands his release it will be granted. See case of Daws, 8 Penn., St. 37: Daws was taken aboard a steamboat at Detroit, Mich., and without due process of law conveyed to Erie, Penn., where he was placed under arrest. He sued out a writ of *habeus corpus* from the Supreme Court. The court upon the hearing *held* as follows: "In the case of the escape of a fugitive from justice from this state to Michigan, after having been charged in this state by indictment with forgery, his arrest in the latter state without legal authority by those who made it, does not entitle the prisoner to discharge before prosecution, *his release not being demanded by the Executive of Michigan.*" Justice Gibson in stating the opinion of the court said, "Had the prisoner's release been demanded by the Executive of Michigan we would have been bound to set him at large."

In the United States District Court, Northern District of Illinois, Judge Gresham rendered a decision of more than ordinary interest, on the 16th of last month, in the case of *Richardson* v. *Day*, as to the rights of contract creditors to sue a party to recover assets after he has made an assignment of his property in the County Court. Day Bros., & Co., were wholesale and retail dry-goods merchants at Peoria, and September 28th last, being indebted to Charles B, Day, a brother of one the partners, in the sum of two hundred thousand dollars, transferred to him their entire stock of goods, worth three hundred thousand dollars, as security for the two hundred thousand dollars and also as security to the amount of five hundred thousand dollars of the firm's paper. Day at once took possession of the property, and on October 9th following, the firm made an assignment of its remaining property to William Jack and L. D. Puterbaugh. Subsequently George C. Richardson & Co., creditors of Day Bros. & Co., to the amount of seven thousand seven hundred dollars, filed a bill to set aside the transfer to Day on the ground that it was preferential and fraudulent, and charging that the assignees had neglected to take any measures for the recovery of such property. A demurrer was filed to the bill on the theory that complainants, being only simple contract creditors, had no standing in a court of chancery, as they had no judgment against the insolvent firm; also, that the County Court, which had acquired jurisdiction of the insolvents and their assets, was the proper tribunal to hear matters respecting the insolvent's assets, and the assignees were the only parties to seek to recover such assets. In deciding the demurrer, Judge Gresham said that it was true that the insolvent firm had determined to make an assignment under the state law; that C. B. Day knew of such insolvency and intention; that it was agreed, for the purpose of evading the law, that Day should receive the transfer of the property first in pretended payment of his debt; and that a formal assignment should be made subsequently, such a palpable evasion of the statute might not be sustained. That question, however, was not presented for decision. It was clear that no suit could be brought against the assignees and Day until a demand had been made on the assignees to sue and they had refused to do so. The bill nowhere alleged that before the suit was brought the creditors requested the assignees to sue and that they refused to comply. The assignees were the proper persons to bring all suits to recover property belonging to the estate. The demurrer would be sustained solely on the ground that the suit was brought by a creditor without a demand being first made upon the assignees to bring the suit.

FEDERAL COURTS.

CRIMINAL LAW—ILLEGAL PENSION FEES. The defendant, an attorney, is prosecuted by information of the district attorney for de-

manding and receiving a greater fee for obtaining a pension fee from a client than the statute allowed. To this information defendant demurred. *Held*, that no prosecution could be sustained for overcharges made subsequent to 1878. Demurrer sustained.—*United States* v. *Van Vleit*—(Brown, J.)—Federal Reporter, February 10, 1885.

DEED FROM HUSBAND TO WIFE—INVALID AS TO EXISTING CREDITORS WHEN THE DEED WAS EXECUTED.—William B. Bayne, being sued upon his bond, conveyed to his wife all his property prior to the rendering of judgment against him. The alleged consideration from Mrs. Bayne to her husband was various sums of money loaned to him at various times. Creditors of Wm. B. Bayne file a bill to set aside the conveyance by Bayne to his wife on the ground that it was done to defraud them of their rights. *Held*, that the deed was valid between the husband and wife but void as against creditors existing at the time the transfer was made.—*Boyne* v. *State*—(Alvey, J.)—62 Maryland Reports.

CAPIAS AD RESPONDENDUM — GUARANTY COMPANY.—Where a company whose business it is to guarantee the integrity of employes for a consideration, and save the employer harmless and where the employe has proved faithless and is charged with embezzlement, the guarantee company is entitled to a capias for the arrest of the said employe.—*London G. & A. Company* v. *Geddes*—(Blodgett, J.)—Federal Reporter, February 10, 1885.

MUNICIPAL BONDS — FRAUDULENTLY ISSUED—BURDEN OF PROOF.—When it appears that municipal bonds were fraudulently issued, the burden of proof is on the holder, to show that he purchased them for value without notice of the fraud. *Held*, that the question of fraud in their issue was properly submitted to the jury and also as to whether plaintiff was a *bona-fide* holder.—*Tracey* v. *Town of Phelps*—(Wallace, J.)—Federal Reporter, February 10, 1885.

SUPREME COURT OF ILLINOIS.

Head-notes to opinions prepared by the Hon. Norman L. Freeman, Official Reporter, to appear in his reports:

17—10.—Daniel C. Lynn *v.* Caleb M. Lyerle. (Opinion by Walker, J., reversing and remanding.) Filed at Mount Vernon, January 22, 1885.

1. Specific Performance—As to payment of purchase money.—Where a party conveyed a tract of land to his son-in-law for $1,200 taking five promissory notes of $200 each from the grantee, one to each of the grantor's five daughters, the other $200 being the grantee's wife's share of the purchase money, and the conveyance was set aside at the instance of two creditort of the grantor and the notes ordered to be surrendered and canceled, which was done, except as to one note which had been paid, after the land was advertised for sale the grantor agreed to discharge the judgments and the lein on the land and did so upon the agreement of the grantee to pay him $1,200, which he afterward refused to do, or to give his notes for the price. *Held*, that a court of equity would compel him to pay the sum really due from him; and that he could not defeat the relief on the alleged ground, the conveyance was originally made to defraud creditors, it being claimed on the other side that the transaction was a distribution by the grantor among his daughters.

2. Attorney—when communications are privileged.—Where two parties go together to an attorney, and there make statement to him in the presence of each other, they are not confidential communications intended to be wtthheld from the opposite party, and there is no error in permitting the attorney to testify to such statements.

3. Where, on a bill to compel the grantee of land to specifically perform his contract, the court in decreeing that he pay the

sum agreed to be paid, and making it a lein on the premises, made no disposition of the injuction previously granted restraining him from cutting and selling timber from the land: *Held*, no error, as the decree fixed the rights of the parties, and when the defendant should execute the decree the injunction would fall or cease to hold good.

Appeal from the Appellate Court for the Fourth District; heard in that court on appeal from the Circuit Court of Union county; the Hon. Daniel M. Browning, Judge, presiding.

Mr. W. C. Moreland, and Messrs. Inscore & Maxey, for the appellant.

Mr. M. C. Crawford, for the appellee.

14—8—James Chalcraft v. The Louisville Evansville & St. Louis Railway Company. (Opinion by Scholfield, J., affirming.) Filed at Mt. Vernon, January 22, 1885.

1. Appeal and writ of error—From and to Appellate Court—Injunction.—A bill for an injunction only, not being a suit to recover money or chattels, is not affected by the statute limiting appeals and writs of error to $1,000 and an appeal lies from the final judgment of the Appellate Court to this court without regard to the magnitude of of the interests involved.

2. Railroads—Duty to make farm crossings.—The word "necessary" in the statute requiring railroad corporations to construct farm crossings "when and where the same may become necessary for the use of the proprietors of the lands adjoining such railroads," was used in its more popular sense, and is equivalent to the words, "reasonably convenient."

3. Same—Farm crossings subject to public interests.—Where the erection and maintenance of a proposed farm crossing over a railroad track will directly affect the operation of the road, as a means of public transportation, by seriously tending to increase the danger of collisions, this will be a sufficient reason why such crossings should not be made, and if attempted to be made by the land owner, he may be restrained from doing so by injunction.

4. Eminent domain—What elements of damages included.—In the condemnation of land for a right of way for a railroad across a farm, the necessities and conveniences of location for farm crossings should be taken into consideration, and after the condemnation they will be presumed to have been, and that damages were estimated upon the hypothesis that a farm crossing would not be constructed and maintained at any particular point when it would directly and seriously affect the safe and efficient operation of the road.

Writ of error to the Appellate Court, for the Fourth District; heard in that court on appeal by defendant in error from the circuit court of Edwards county; the Hon. C. S. Conger, Judge, presiding.

Mr. Wm. F. Foster and Mr. J. M. Campbell, for the plaintiff in error.

Mr. H. J. Strawn and C. H. Patton, for the dejense.

Railroads — Right of one Road to Cross the Track of Another Road—By Agreement or by the Right of Eminent Domain.—A railroad company in constructing their road has the right to select the place where they shall cross the track of a road already constructed and may procure the right of way across the track of the road already built by mutual agreement or by right of eminent domain. See 71 Ill., 333; 97 Ill., 500. If by the crossing damages is thereby caused to the former company that is no bar; the presumption is that full compensation will be rendered. See 108 Ill., 265. Where the latter company has obtained a right of way for a crossing, by mutual agreement, and subsequently seeks to obtain additional width of land by proceeding on the right of eminent domain, the fact that the original crossing was obtained by consent or agreement is no bar to thus obtaining an additional width. See 17 Ill., 123; 18 Ill., 324; 36 Conn., 196. No difference what

the exigencies are which render additional tracks, and a wider crossing necessary; 100 Ill., 137; 105 Ill., 73; 105 Ill., 511. The petitioner by acquiring a partial right of way by contract is not thereby estopped from condemning a further right of way.—*C. & W. I. R R Co*, v *I C R R Co*—(Sheldon, J)—Filed at Ottawa, January, 1885,

SUPREME COURT OF KANSAS.

HOMESTEAD—CONTRACT TO CONVEY BY HUSBAND WITHOUT THE CONSENT OR SIGNATURE OF HIS WIFE, VOID.—Where a husband contracted to convey his homestead for an agreed consideration, without the consent of his wife, and received part of the purchase money and a promissory note for balance, in an action brought to recover on the note it is *held* that the conveyance being made without the consent of the grantor's wife the note is without consideration and void. *Held* further, that defendant having paid part of the money with a knowledge of all the facts he cannot recover the money so paid. —*Thimes* v. *Stumpff*—(Johnston, J.)—Filed January 7, 1885.

DIVORCE—WHAT CONSTITUES EXTREME CRUELTY.—In Carpenter *v.* Carpenter, 30 Kans.., 712, it was held that any unjustifiable conduct on the part of the husband which so grieviously wounds the mental feelings of the wife, or so utterly destroys her peace of mind as to seriously impair her bodily health or endanger her life, or such as utterly destroys the legitimate ends of matrimony, constitutes extreme cruelty, although no physical or personal violence is inflicted or even threatened. In the case at bar the husband often spoke to his wife unkindly, and insinuated that a child which had been born of the marriage was not his child. *Held*, that the charge of extreme cruelty was sustained.—*Avery* v. *Avery*—(Horton, J.)—Filed January 7, 1885.

SUPREME COURT OF MICHIGAN.

ATTORNEY AND CLIENT—LIEN OF ATTORNEY ON FUNDS RECEIVED.—Plaintiff employed defendant to attend to certain matters of litigation at a stipulated sum per day while so engaged. The defendant upon the settletlement of a certain claim received moneys for plaintiff in the sum of $5,922.25; when requested to pay it over to the plaintiff he offered to pay over $3,722.25, retaining $2,-200 which he claimed was due him for services rendered. This claim for services the plaintiff denied and thereupon brought this action. On the trial the plaintiff was called as a witness to show the facts which he had previously set up in the affidavit, upon which the *capias* issued in commencing the suit. The defendant interposed an objection on the grounds that the proposed testimony was immaterial, which objection was sustained by the court. The court thereupon directed a verdict for defendant and plaintiff appeals. *Held*, that the trial court erred in excluding the testimony, and directing a verdict for defendant. A new trial is ordered.—*Robinson* v. *Hawes*—(Champlin, J.)—N. W. Reports, January 28, 1885.

COMMON CARRIER—CONTRACT TO TRANSPORT A CIECUS FROM PLACE TO PLACE.—Defendant company contracted to transport a circus belonging to plaintiff, with all its men and equipments, along its line of road, stopping at such places as plaintiff wished to exhibit. The train was to be operated and run under the control and management of plaintiff, subject to the rules of the defendant company. The contract was made at greatly reduced rate and plaintiff executed a release for any damages accruing. A collision occuring, causing great damage to the plaintiff he brings this action to recover. *Held*, that it was competent for defendant to stipulate for exemption in such contract, and that it could not under said contract be held liable as a common carrier.—*Coup* v. *Wabash, St. L. & P. Ry. Co.*—(Campbell, J.)—Filed January 28, 1885.

NEGOTIABLE INSTRUMENTS—DEFINITION

OF.—Judge Story defines a promissory note as follows: "A written engagement by one person to pay to another person therein named, absolutely and unconditionally, a certain sum of money at a time specified therein." The definition by all text-writers is substantially the same.

An action of debt was brought on a note which was in the following form:

"$366.66. COLDWATER, Mich., Feb. 27, 1883

"On the first day of November, 1883, we, the undersigned, whose post-office is Algansee, County of Branch, State of Michigan, jointly and severally, for valve received, promise to pay E. M. Birdsall & Co., or order, Three Hundred and Sixty-six, (66-100) Dollars with interest at 7 per cent. per annum if paid when due; if not so paid then the interest shall be 10 per cent. per annum from date. We also agree to pay exchange and all expenses, including attorney's fee, incurred in collection. Payable at the First National Bank, in Coldwater, Mich.

"We do hereby relinquish and waive the benefits of all laws exempting real and personal property from levy and sale, and all benefits or relief from valuation and appraisement laws." GEORGE R. PURDY,
ELNATHAN GEORGE."

Held, that such an instrument is not negotiable according to the law.—*Merchant's Nat. Bank of Auburn* v. *Purdy*—(Champlin, J.)—N. W. Rep. January 31, 1885.

SUPREME COURT OF MAINE.

DIVORCE—OBTAINED IN ANOTHER STATE FOR CAUSES NOT ALLOWED BY THE STAUTE OF THE STATE OF THEIR DOMICIL.—Plaintiff and defendant were residents of the State of Maine. The husband, desirous of procuring ing a divorce removed to the State of Illinois and after one year's residence as required, files his petition for divorce and thereupon obtained a decree. Having conveyed some real estate situated in Maine subsequent to the decree of divorce, and soon thereafter died, an action is brought by the divorced wife against the grantee for her right of dower on the ground that the decree of divorce was void. The statute in Maine provides that "when residents of this State go out of it for the purpose of obtaining a divorce for causes which occurred while the parties lived here, which do not authorize a divorce and it is obtained it shall be void in this State." *Held*, that this statute is not applicable when the party *bona-fide* establishes his residence in another state.—*Gregory* v. *Gregory*—(Virgin, J.)—Cent. L. J., February 13, 1885.

SUPREME COURT OF MINNESOTA.

VENDOR AND VENDEE—TIME OF, ESSENCE OF THE CONTRACT.—In a contract for the sale and purehase of land, it was agreed that the vendor should furnish the vendee an abstract of title. The contract also contained this clause, viz: "This contract to be void if the settlement of this purchase is not had within twenty days from the delivery of the abstract." *Held*, that the clause *per se*, makes time of the essence of the contract, and that if the vendee failed to signify his acceptance of the title within twenty days, he could not insist upon specific performance on the part of the vendor.—*Judd* v. *Skidmore*—(Berry, J.)—Filed January 29, 1885.

ACTION FOR PERSONAL INJURY—PERFORMANCE OF A PHYSICAL ACT IN PRESENCE OF JURY.—Plaintiff brings an action for personal injury which she sustained while getting off defendant's cars, by reason of negligence of the employes of defendant. While giving her testimony on the trial plaintiff testified that the injury had caused her to be lame or to limp when walking. Defendant's counsel thereupon requested the court to order her to walk across the room in presence of the jury, that they might see in what degree she was lame. This the court declined to do, and defense took an exception. Upon appeal defense rested chiefly on this exception. The trial court overruled a motion for a new trial. *Held*, that as to this ruling the exception was well taken; that it would have been proper

for the judge to have directed plaintiff to walk across the room as requested, but the fact of her injury and consequent lameness was fully established alliunde and the judgment of the lower court in affirmed.—*Hatfield* v. *St. P. & D. R. Co.*—(Mitchell, J.) Filed January 21, 1885.

SUPREME COURT OF NEBRASKA.

MORTGAGE — ALTERATION AFTER EXECUTION—EFFECTS OF.—Plaintiff brings this action to cancel a mortgage on a homestead on the ground of fradulent alteration of the mortgage after it was executed. Plaintiff and her husband executed a promissory note for $750 to one Wood, and executed a mortgage as plaintiff supposed on two certain lots known as No. 1 and 2 in a certain block. When plaintiff appeared before the notary public to acknowledge the execution of the mortgage lot 1 and 2 was the property described in the mortgage, and she executed the mortgage. Subsequently the notary substituted the Nos. 13 and 14 instead of Nos. 1 and 2. Nos. 13 and 14 represented the homestead where the plaintiff and her husband lived. *Held*, that the alteration voided the mortgage and plaintiff was entitled to judgment accordingly.—*Perean* v *Frederick* —(Maxwell, J.)—Filed January 20, 1885.

TELEPHONE COMPANY—A PUBLIC SERVANT AND BOUND TO SUPPLY ALL CUSTOMERS WITHOUT DISCRIMINATION.—Plaintiff applied for and obtained a telephone, placed in his office, but for some time afterwards while the telephone directory was in course of preparation he could not make use of it. When the bill for its use was presented plaintiff expressed a willingness to pay as per agreement. for the time he had used it, but refused to pay for that portion of time which had expired before the directory was completed during which he had not used it. Thereupon the instrument was removed from his office. Subsequently plaintiff made an application for an instrument to be again placed in his office, which was refused by the defendant. *Held*, that the telephone company is a public servant and must supply all applicants alike without discrimination.—*Webster* v. *Neb. Telephone Co.*—(Reese, J.)—N-W. Reports, February 7, 1885.

NEW YORK COURT OF APPEALS.

CONSTITUTIONAL LAW—A STATUTE PROHIBITING A LEGITMATE BUSINESS TO BE CARRIED ON BY A PARTY IN HIS RESIDENCE.—In May, 1884, the legislature of New York passed an act making it unlawful for anyone to carry on the business of making cigars in a tenement house in any city having over five hundred thousand population. Under this statute plaintiff was arrested for a violation thereof. Being brought before the police justice in the city of New York the charge was clearly sustained and the justice gave judgment against the prisoner from which an appeal was taken to the Supreme Court. *Here* again the judgment below is affirmed and the case carried to the Court of Appeals. *Held*, that the act is unconstitutional and void —as it limits a man in proper use of his own property. Blackstone in his classification of fundamental rights, says: "The third absolute right inherent in every Englishman, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions without any control or diminuation, save only by the law of the land." 1 Com. 138. In support of this decision, Pumpelly *v.* Green Bay Co., 13 Wall. 177; Wynchamer *v.* People, 13 N. Y., 378; People *v.* Otis. 90 N. Y., 48; Butchers' Union Co., *v.* Crescent City Co., 111 U. S., 746; Bertholf *v.* O'Reilley. 74 N. Y., 509; Bradly, J. in the case of Butchers' Union Co., *v.* Cresent City Co., says: "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States of which he cannot be deprived."—*In Re. Jacobs* —(Earl, J.)—Albany Law Journal. January 31, 1885.

SUPREME COURT OF NEW YORK.

CHATTEL MORTGAGE -RIGHT OF MORT-

GAGEE TO TAKE POSSESSION WHEN HE FEELS "UNSAFE OR INSECURE."—Plaintiff executed to defendant a chattel mortgage on certain property, among which was one mare. The mortgage contained the usual clause providing that the mortgagee might at any time when he felt "unsafe or insecure," take possession of the property. Pending the term for which the mortgage was to run, the mortgagee did take possession of the mare and caused her to be sold. In an action by the mortgagor for wrongful conversion, it is *held* the defendant was not liable; that the terms of the mortgage vested in him an absolute discretion and the exercise of this discretion did not depend upon the fact whether he had reasonable grounds for considering himself insecure or not.—*Allen* v. *Vose*—(Haight, J.)—Albany L. J., January 17, 1885.

SUPREME COURT OF OHIO.

SALE OF LAND UNDER AN EXECUTION—PAYMENT OF DEBT BEFORE CONFIRMATION OF SALE—ERROR TO CONFIRM SALE.—On the 8th of March 1881 the sheriff sold certain real estate belonging to plaintiff in error to satisfy liens existing against said property, and on the 10th, two days later, made his report of said sale to the court. On the 5th of April following the plaintiff filed a motion to set aside the sale upon the ground that the liens together with costs had been fully paid, he having since the sale paid the same. This motion was overruled and a motion to confirm the sale was allowed. To this ruling plaintiff took exceptions and thereupon prosecuted an appeal. *Held*, that it was error to confirm such sale against the debtor's objection.—Judgment reversed.—*Reed* v. *Madigan*—(Owen J.)—Cent. L. J. February 13 1883.

SUPREME COURT OF TENNESEE.

NATIONAL BANKS—THE TAKING OF USURIOUS INTEREST—WHO MAY RECOVER.—Section 5198 of the revised statute of the United States provides that any national bank charging usurious interest shall be liable to a penalty of twice the amount of interest so charged, and the same may be recovered by the person who has paid it. or by his legal representatives. Barrett, Landis & Co., as is alleged, had paid a larger sum of money charged as excessive interest by the defendant bank. Barrett, Landis & Co., becoming insolvent and the plaintiff being one of their creditors, he brings this action to recover the penalty prescribed by act of congress. The defense interposed is chiefly on the ground that a creditor is not a legal representative, and hence does not come within the statute as to who may recover. *Held*, that the statute makes the penalty a debt and as such may be recovered by a creditor. See 1 Otis, 35; 10 Otto, 244. The bank may off-set any expense incurred in the way of exchange and any just debt against the borrower.—*Barrett* v. *Shelbyville Nat. Bank*—(Turney, J.)—Cent. L. J., February 13, 1885.

SUPREME COURT OF WISCONSIN.

RAILROADS—SIGNALS AT HIGAWAY CROSSING.—The statute of Wisconsin impose upon railroad engineers the duty of sounding the whistle and ringing the bell in approaching the crossing of a highway, and makes the company liable for damages accruing in consequence of their neglect to do so. Plaintiff's wife was driving a horse and buggy on a highway which was parallel to the railroad tract and the horse became frightened by the approach of a train, ran away and killed the lady and seriously injured a child who was in the carriage with her. Plaintiff thereupon brings this action for damages, *Held*, that although the lady was not crosssing or intending to cross the track, yet the defendant was negligent in not complying with the regulation in sounding the alarm and the plaintiff is entitled to a verdict and judgment. —*Ransom* v. *C. St. P. M.* & *O. R. R. Co.*—(Lyon J.)—N. W. Rep. February 7th 1885.

DECEDENT'S ESTATE—APPOINTMENT OF ADMINISTRATOR—HEIRS NON-RESIDENTL.—Where a party dies intestate leaving a

brother and a niece as his only heirs, and they both non-residents of the state, the niece petitions the court for the appointment of an administrator who is a resident of the county where the property of the decedent is. The brother of the decedent appears and objects to the appointment asked for by the niece and asks the appointment of a party not a resident of the state. The court grants the niece's petition, and the brother of decedent appeals from this ordep. *Held*, that the order of the court was not error and is affirmed.—*Sargent* v. *Watts*—(Cole C.J.)—N. W. Reports, February 7 1885.

VENDOR AND VENDEE—SUB-DIVISION OF A VILLAGE—SALE OF LOT DESIGNATED BY A PLAT.—The defendant laid out a plat of a village on land he owned locating streets and alleys. He sold to plaintiff a lot, which by the plat was a corner lot. The streets as laid out were used for some time in common by the purchaser and the original owner. The original owner determined to vacate the plat and closed up the street in front of the lot which he had sold to plaintiff. Thereupon the plaintiff brings this action in trespass for closing up and obstructing the street. *Held*, that although there was no public dedication of the street yet plaintiff had rights in the street in front of his lot which defendant could not abridge.—*Donohoo* v. *Murray*—(Orton, J)—N. W. Reports, February 7 1885.

SUPERIOR COURT OF COOK COUNTY.

OPINION FILED FEBRUARY 5, 1885.

M. M. Day v. *Charles Hirsch.*

THE COURT STATES WHAT OPTION DEALS OR CONTRACTS ON THE BOARD OF TRADE WILL BE CONSIDERED GAMBLING CONTRACTS AND VOID.

SMITH, J.—The suit is upon a promissory note; the defendant by special plea attacks the consideration of this note alleging that it "was and is for and on account of differences in option deals in grain on the Board of Trade, in the city of Chicago, and for no other or different consideration whatever.; that said option deals were gambling contracts and absolutely void, and that said note was given solely for differences in option deals as aforesaid, and is void for want of consideration."

These option deals or contracts which are to be considered gambling contracts and therefore void, are deffned in the 130th section of the criminal code.

They are contracts for the option or privilege to sell or buy at a future time. Such contracts, if upon sufficient consideration, were valid at common law; they are neither bets, nor wagers, nor wagering contracts upon general principles, nor are they in violation of the 131st section of the criminal code, or any similar statute like the eight or nine Victoria, which enacts that all contracts or agreements * * by way of gambling or wagering, shall be null and void," but they are null and void simply because they are prohibited and declared void by this section 130 of the criminal code.

There was no evidence introduced on the trial of this cause tending to support this plea.

There was no evidence either that the defendant ordered the plaintiff, as his broker, to enter into such option contracts, or that the plaintiff did in fact make such contracts or deals, or that the consideration of the note in suit was wholly or in part for differences growing out of such transactions. If the defendant can only attack the consideration of this note by special plea, it is an end of this defense; but as counsel outside of the issue presented by this plea urged upon the trial, and upon the motion for a new trial, that the proof makes a case justifying the court in finding that the defendant employed the plaintiff not to buy and sell grain, merely to makes wagers or bets in his behalf as to future market prices in violation of section 131 of the criminal code, it may be proper

to consider the case in this aspect also.

The testimony of both the plaintiff and the defendant proves unmistakably that the plaintiff made actual purchases and sales, or rather contracts for actual purchases and sales of grain in the usual course of business upon the Chicago Board of Trade; that he made these purchases and sales under orders from time to time from the defendant. These contracts were in plaintiff's name and he became personally liable upon each of them for the actual receipt or delivery of the grain purchased or sold, as the case might be. Not only is there no testimony tending to prove that the defendant engaged the plaintiff to deal in differences as it is termed, but the standing rules of the board, of which the plaintiff was a member and where he was to deal, prohibited such deals and provided that if the plaintiff should engage for the defendant in the business of dealing in differences on the fluctuations in the market price of and commodity without a *bona fide* purchase and sale of property for actual delivery, he should be deemed guilty of unmercantile conduct and for the first offense liable to suspension, and for the second offense expulsion from the board. Had the defendant engaged the plaintiff to deal merely in differences upon the future fluctuations of the market—in other words to make bets or wagers upon future market prices, he would have engaged him in an illegal business and the plaintiff could not recover for losses, advances or commissions growing out of such transactions.

But having engaged him to buy and sell merchandise on his account for a commission, the plaintiff was entitled not only to his commissions but to indemnity for advances made and money paid under contracts on which he himself became personally liable.

And in such case it is no answer to say that the defendant embarked in this business as a mere speculator and for merely speculative purposes, and with the understanding that the contemplated contracts of purchase and sale should, as far as possible, be made upon such terms as to amounts and times of delivery as to relieve both the plaintiff and defendant from embarrassments which might arise from having on hand at any one time large amounts of grain without contracts of re-sale under which it could be placed and disposed of: the fact would still remain that the plaintiff, under orders from the defendant, had become personally liable upon contracts in which he had no personal interest above his commissions.

Surely, under such circumstances, the plaintiff made no wager contracts with the parties with whom he dealt; and how can it be pretended that he made bets or wagers with the defendant?

It requires two parties to bet or wager; each must have a chance to win, and be subject to the hazard of losing; but here, no matter what the future market may be, the plaintiff neither win nor loses, but simply collects his commissions as compensation for services rendered and liabilities incurred on behalf of his principal.

A careful examination Tenny *v.* Foote, 4 Bradwell, 594, affirmed by the Supreme Court, 95 Ill, 99, and Gnizewood *v.* Blane, 73 Eng. Com. Law. Reps. 538, upon which the decision of Tenny *v.* Foote is based, together with the recent case of Thacker *v.* Hardy, 4 Law Reps. Q. B. Division, 685, where the whole subject is very fully and ably reviewed and Gnizewood *v.* Blane is limited and explained, will dispel all confusion of ideas upon this important subject, and satisfactorily show that the law is as I have held in this case.

The motion for a new trial is overruled and judgment is ordered on the finding.

Cary, Cody & Gary, for plaintiff.

E. F. Runyan, and Haley & O'Donnell, for defendant.

MARYLAND COURT OF APPEALS.

March 8, 1883.

Merryman v. *Euler.*

ATTORNEY AND CLIENT—PRESUMPTION AGAINST

ATTORNEY—BURDEN OF PROOF IN QUESTION OF GOOD FAITH, ON ATTORNEY.

Appeal from the Circuit Court of Baltimore City. The case is stated in the opinion of the court.

Orlando F. Bump, for appellant.

William J. O'Brien, for appellee.

IRVING, J. Upon the application of "The President and Directors of the German Fire Insurance Company of Baltimore," who hold the first mortgage on the property, with assent therein to a decree, the Circuit Court of Baltimore city passed a decree against Henry Otto, the mortgagor, for the sale of the mortgaged property, and had appointed Lewis H. Robinson, trustee, to sell the same. It appears that the appellee, John Euler, had the second mortgage on the property, and employed the appellant to look after his rights to the surplus proceeds, after paying the first mortgage. The property was sold, and the sale reported and ratified. Appellant filed a petition in Euler's name, asking that he be made a party defendant, and that the surplus proceeds, after paying the first mortgage, might be awarded to him. He was made a defendant by order of court. Appellant then filed Euler's claim with the interest which had accrued added.

Subsequently the appellant filed a petition in his own name, setting up an assignment from John Euler for one-half of any sum that might be awarded Euler in the case. That agreement was dated the 25th of November, 1881, (the same day on which the sale took place), and was an assignment under seal. To the allowance of this claim on the part of the appellant the appellee objected, and filed a petition asking its disallowance: 1st. "Because the same was procured from him when he was in a condition making him unconscious of what he was doing or the effect thereof." 2nd. "Because the only professional labor performed by Merryman in the case was filing the claim of the appellee; and that the said Merryman had no right to any allowance out of the funds in the trustee's hands." The court ordered testimony to be taken, upon which two audits were stated, one allowing, and the other disallowing the claim of the appellant.

The court upon the proof rejected the account allowing the assignment to Merryman, and ratified the account which disallowed it Before finally ratifying either, however, the court offered to direct the allowance of fifty dollars for appellant's services and no more, and to have that put into the account it would ratify. This was refused by the appellant, who appealed from the order of the court ratifying the account which excluded his claim.

The court said: "The relation of counse and client is a fiduciary one, requiring the court to scrutinize any contract between them, and upholds only such a one as is apparently reasonable and fair. The real labor in this case was performed by Mr. Robinson, the trustee, who has been allowed a fee of one hundred and fifty dollars for his services. If Mr. Merryman will take a fee of fifty dollars for his compensation, I will ratify an account making him that allowance."

Upon an examination of all the evidence in the case, we think that the court not only took the right view of the law, but also offered Mr. Merryman all that could possibly be asked under the circumstances. There was some difficulty in respect to the title that was to be sold, because of the extinction of the leases upon the property, which required some negotiation to perfect the same. This duty, it seems, devolved on the trustee to sell, and the court says he performed nearly the whole service rendered the parties, and ordered him paid accordingly from the proceeds of sale. It is not necessary to go more minutely into the facts. It is immaterial whether the appellee was drunk when the assignment was made, or not; for it was abundantly clear that the relation of client and attorney existed; and under such circumstances, the law makes a presumption against the attorney and in favor of the client. In such case the *onus* is on the attorney to prove the entire *bona-fides* and fairness of the transaction, which he has failed to establish to the

satisfaction of the court below, or to us.

In Walmesley *v.* Booth, 2 Atkyns, 27, Lord Hardwicke says: "There is a strong alliance between an attorney and his client, and a great obligation upon the attorney to take care of his client's interest; and the court will relieve a client against the extortion of an attorney." In that case the client was plaintiff asking relief, and as he consented that the bond should be regarded as security for what was actually due, the court said he would allow it to be so. In Newman *v.* Payne, 2 Ves. Jr., 200, the chancellor lays down the same rule, and adverts to the fact that in Walmesley *v.* Booth, the bond was allowed to stand as security for the actual amount due, only because the plaintiff consented to it.

All the authorities concur in that the highest degree of fairness and of good faith is required from an attorney toward his client, and all his dealings will be closely scrutinized, and no contract between them will be upheld where any undue consequences result to the attorney. Weeks on Attorneys-at-Law, 441, 450, and 451; Story, Eq. Jur., §§ 312a, 312b, 312c, and authorities there collated; and Kerr on Fraud and Mistake, 151, 161, 163, 168. The attorney is supposed to have an ascendancy over the client, because of his relation to him, and can easily impose on his credulity; therefore, transactions which would be open to no objection where no such relation exists, will be held invalid as against a client. It is a rule of public policy. Gray, et al., *v.* Emmons, et al., 7 Mich., 533; Brown *v.* Bulkley, 1 McCarter Chy., 14 N. J., 451. In the last cited case the learned Chancellor Green said, when a security is taken by an attorney from a client as compensation for his services, the presumption is that it is unfair, and the *onus* of proving it fair is on the attorney. In that the court held that the transfer would not be wholly set aside, but would be held as security for what was actually the attorney's due. Conceding without so deciding, that in this case the appellant was entitled to have the assignment to him so treated, he has no ground for complaint, for the court offered to so treat it by allowing him in the amount of fifty dollars for his services, which he declined, preferring to stand on what he regarded as an assignment the court could not disregard. The court needed no further proof on the subject, and no request was made to allow more. The order of the court must be affirmed.—59 Maryland.

UNITED STATES SUPREME COURT.

OPINION FILED JANUARY 5, 1885.

Pullman Palace Car Company, George M. Pullman, Luther H. Pierce, Huntington W. Jackson and David B. Lyman, Appellants, *v.* Robert John Speck, James Dunn, by Simon Straus, his next friend, Bridget Connelly, and Patrick Connelly.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REMOVAL OF SUIT—ACT OF 1875—WHEN PETITION FOR REMOVAL MUST BE FILED.

Mr. Justice Miller delivered the opinion of the court.

This is an appeal from an order of the Circuit Court for the Northern District of Illinois, remanding to the State court a case which had been removed from that court into the Circuit Court.

The removal was prayed for in the petition on the ground that the controversy was between aliens and citizens of the State of Illinois, and one of the points argued before us is that other parties to the suit, with interests opposed to that of the appellants, at whose instance the removal was made, are citizens also of Illinois, and for that reason the suit was not removable.

But we do not pass on this point, because we are of opinion that the application for removal came too late.

The act of March 3, 1875, under which this removal was asked, requires of the party seeking it that "he or they make and file a

petition in such suit, in such State court, before or at the term at which such cause could be first tried, and before the trial thereof for the removal of such suit into the Circuit Court."

Under the act of 1789, §12, U. S. S. 79, the right of removal could only be exercised by a defendant in a court of a state of which he was not a citizen, and he was required to make his application for the removal at the time of entering his appearance.

The reasons for this were obviously that the plaintiff, who had selected the state court as his forum, should not be permitted to change it after calling his adversary there and that the defendant, who had a right of removal, and failed to exercise it at the earliest period possible, should be presumed to have acquiesced in the forum chosen by the plaintiff. The law remained in this condition until an act of congress of July 27, 1866, authorized an alien, or citizens of a state other than that in which the suit is brought, to remove the cause, though there be other defendants who are citizens of that state, when there can be a final determination of the controversy, so far as he is concerned, wiihout the presence of the other defendants. In this class of cases the petition for removal could be filed at any time before the trial or final hearing of the cause: 14 U. S. S. 306. An act to amend this act, approved March 2, 1867, authorized either plaintiff or defendant in a state court, when they were citizens of different states, to remove the suit, on account of prejudice or local influence, into the Circuit Court of the United States, if he filed in the state court an affidavit of the existence of this cause of removal, at any time before the final hearing or trial of the suit. These latter acts do not speak of terms of the courts, or of the appearance of the moving party, but using the word hearing and trial in their appropriate sense of a hearing in chancery and a trial at law, permit the removal at any time before the hearing or the trial is begun: Removal cases, 100 U. S. R. 457.

The act of 1875, which governs the case before us, while superseding by its general provisions nearly all the removal statutes, prescribes a rule which is neither so stringent as the act of 1789, nor so lax as those of 1866 and 1867. While the party who has a case for removal is not put to his election to exercise or abandon the right to remove at the moment of entering his appearance, he is not permitted unreasonably to delay this election during all the period incident to the preparation of the case, until both parties find themselves in condition to go to trial at law, or are ready for a hearing in chancery. The later act clearly requires more diligence in making the election than this. If it had intended to enact that the removing party had until the case was ready for trial on both sides or was fully at issue, or was noticed or set down for trial, it would have been easy to have indicated this in words. The language, however, which was adopted, means a very different thing. It is not the time when the case stands ready for trial on the calendar, but the term at which it could be first tried. Not the term at which the party can no longer delay a trial, but the term at which it could be first tried. These words have no meaning, if they do not mean the first term after the commencement of the suit at which a trial was in order was a thing which the urging or pursuing party had a right to look for, and to put his adversary to showing if he desired a continuance. In the language of this court, "the election must be made at the ffrst term at which the cause is in law triable." Babbitt *v.* Clark, 103 U. S. R. 606. In other words, at that term in which according to the rules of procedure of the court, whether they be statutory or rules of the court's adoption, the cause would stand for trial if the parties had taken the usual steps as to pleading and other preparations. This term at which the case could be first tried is to be ascertained by these rules, and not by the manner in which the parties have complied with them, or have been excused for non-compliance by the court or by stipulation among themselves.

On this point the language of McCrary,

circuit judge, in Murray *v.* Holden, 1 Mc Crary's, R. 341 is very pertinent:

"One of the objects," he says, "of the act of 1875, was to prevent the abuses which had been practiced under the acts of 1865 and 1867, which allowed a removal at any time before the final hearing. It was evidently the pupose of congress to fix an earlier definite time which would not permit the litigant to experiment in the state court until satisfied he would fail there, and then change forum In all the states there is by law or rule, term—*i. e.*, a term at which a cause may for tne first time be called for a trial. In practice but few contested cases are tried at the first trial term, and it often happens that controversies arise upon questions of pleading, so that no issues of fact are joined at that term. It is nevertheless the term at which, within the meaning of the law, such cases could be first tried, and therefore is the term at or before which the petition for removal must be filed."

The case of Babbitt *v.* Clark, *supra* in this court, is also a point. The court there says: "The act of congress does not provide for the removal of a cause at the ffrst term at which a trial can be on the issues as finally settled by leave of the court or otherwise, but at the first term at which the cause, as a cause, could be tried."

Under this construction of the statute, which is undoubtedly sound, there is no difficulty in deciding this case. While it is a chancery cause, the same principles must govern it, though it may require a little more care in determinging when it could be first tried.

It appears by a stipulation in the case that the first Monday in every month in the beginning of a new term of the Superior Court of Cook county, from which this suit was removed. It also appears that the suit was brought to the September term, 1883 of that court, and the defendants, who were the removing party and are also appellants here, obtained an extension of time by order of the court, for thirty days from September 20th, to answer the original bill, and like time was granted to the defendants in a cross-bill to answer that. This time was extended afterwards in both cases, by agreement of counsel until January 11, 1884, and on that day they were filed. The application for this removal was made in the February term, 1884.

It thus appears that, including the appearance term at which the case might have been tried if appellant had answered according to rule instead of obtaining an extension of thirty days by order of the court, there were five terms of the court at which the motion would have been made for removal in which no action was made. We see no reason why this case was not triable at any of those terms according to the due course of proceedings in such cases. The only reason why it was not so tried, was the time beyond that of the usual course prescribed by rule, which was obtained by order or the court or by agreement of the parties; the case was certainly triable at the January term, after the answers were in, for it could have been tried on bill and answer, or the plaintiff have been forced to file replication, which could have been done instanter.

The decree of the Circuit Court remanding the case to the State court is affirmed.

H. W. Jackson, for appellaat.

Rosenthal & Pence, for appellee.

A PARTY owning a storehouse and contents which he had insured, becoming insolvent, suffers judgment to be entered against him in the United States Court, on which execution is issued and the property is seized in execution by the marshall. While thus in the custody of the marshall the property is destroyed by fire. The policy containing the usual clause of forfeiture in case of alienation does the seizure by the marshall and the change of possession work a forfeiture of the policy? Where an insurance was effected upon a vessel and a clause in the policy provided that it should be void upon assignment or upon a change of commissioners it was *held* that seizure by the sheriff at the suit of a creditor did not work a forfeiture. Marigney *v.* House Mutual Ins., Co., 13 Ann La. 338; Phœnix Ins., Co. *v.* Lawrehce, 4 Merc. Ky. 9; see 6 Warton, Pennsylvania 483. In Strong *v.* Mfrs. Ins. Company, 10 Pick (Mass) 40 it is *held*, that a sale of real estate by foreclosure of a mortgage did not work a forfeiture of a policy under like covenants, as long as the mortgagor had the right of redemption, see also Clark *v.* V. N. E. M. Fire Ins. Co., Cush, (Mass) 342. If the policy contain a clause which provides that in case the property be seized in execution, or by due process of law the possession is changed the policy shall become void we know of no reason why such a covenant should not be sustained.

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This Compendium of the laws of the several states defining the powers, duties and practice by Sheriffs and other Ministerial officers, is placed upon our table. The authors name, well known to the profession, is a guaranty of accuracy and thoroughness in any work from his pen. The office of sheriff is in most cases filled by men not learned in the law, who are frequently embarrassed in the discharge of their official duties, for want of explicit information as to what are their duties. *To such officer*, not familiar with the circumlocution and technical phrases of common law *here is his guide*, free from all technical language and useless verbiage. The contents of the volume are indicated by tne following headings of the subdivisions: — ELECTION OF — BONDS OF — PROCESS — CAPIAS AD RESPONDENDUM — ARREST — BAIL — ESCAPE — ATTACHMENT — CAPIAS AD SATISFACIENDUM — NE EXEAT — INJUNCTION — THE JURY — ATTENDANCE AT COURT — EXEMT PERSONATLY — FI. FA. — INDENMITY OF SHERIFF — LEVY AND SALE — FIXTURES — AGAINST SECURITIES — LIENS — RETURNS — ACTIONS BY — ACTIONS AGAINST — EXECUTION SALES — POSSESSORY PROCESS — REMOVAL OF — COMPENSATION OF — CONTEMPT AND AMERCEMENT — OF CONSTABLES — DE FACTO SHERIFF — DUTY IN CRIMINAL CASES — OF U. S. MARSHALLS — Altogether this will be found to be one of the most useful of books, either in a lawyer's library or in the hands of the officers of whose powers and duties it treats. Published by The Gilbert Book Company, St. Louis, Mo.

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CHICAGO, APRIL, 1885.

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NEW PUBLICATIONS.

A TREATITE on the RIGHTS of MARRIED WOMEN as well in respect to their property and person as totheir Children, Second Edition revised and improved to date, By ,William H.Cord Esq. 2 Vols. Philadelphia, Pa KAY & BROTHER.

WE are in receipt of a copy of Cord on the legal and equitable rights of married women, second edition. This work originally published in 1860 is well known, to the profession. Since it was first published many changes have been made in the several states by statutory enactment, generally tending to extend the civil rights of married women, and in construction of these statutes new principles have been evolved and new rules established. The author says in his preface to this work: "We have endeavored first to present the common law, and rulings in equity regulating the same, as comprehensivily as possible, with the authority therefor; then its progress and changes in as brief form as possible down to its presents *status;* selecting such leading cases as seem to have reviewed, and finally settled new or doubtful points of construction, and presented the results in the plainest manner calculatied to shorten research for precedents, define results, and facilitate the labors of the practitioners and courts". The work is a very clear, concise and well arranged treatise on one of the most complex branches of the law, and will be a valuable addition to the library of any practicing lawyer.

NOTES OF CASES.

An application was recently made to the county court of cook county illinois (Prendergast J) by, Dong Tong, and his wife, citizens of China, for the adoption by them of a white male infant, born of american parents. In support of the petition, the petitioners were shown to be of good repute and of sufficient means to support, care for and educate the child. The petition was however denied on the ground that petitioners were not and could not become citizens of the state.

RAILROADS — REQUIRING A PASSENGER TO SHOW TICKET BEFORE ENTERING CAR— A railroad company adopted the following rule; "Conductors are required to station their breakman and train porter on the depot platforms where the trains stop, and have them examine tickets, allowing no one to get aboard without a ticket or pass."

A person to whom this rule was known purchased a ticket, but refused to show it when asked to do so, but showed money sufficient to pay his fare and proceeded to enter the car against the remonstrance of the breakman. After being seated in the car two employes approached him and demanded that he show his ticket or leave the train, which he refused to do. Thereupon the employes of the coumpany ejected him from the train, using such force as was necessary. In an action for damages for being wrongfully ejected, it is *Held* that he could not recover. —*International R. R. Co.* v *Goldstein*,—4 Texas Law Review.

ON the 13th. of February last David Dudley Field, of New York, celebrated his eightieth birthday. Mr. Field deservedly is accorded a high rank in the legal profession, and has made his impress upon the Jurisprudence of the country which will be an enduring monument to his memory. He it was who was chiefly unstrumental in establishing the New York code of practice. Seventeen states of the Union have adopted a code modeled after that of New York, and in other states which have not addopted a code the practice has been materially modifyed by the influenceof existing codes in other states. In speaking of codes we quote the following from an exchange as the expression of Judge Bradley—"Codes are undoubtedly useful for the purpose of settling disputed and doubtful points, and giving to the citizen the ordinary rules of law in a compact and intelligible form, but they should not be allowed to usurp the prerogatives of Justice itself, seated in man's bosom, by giving to the letter of the code the inexorable fixity of a statute, and thus reducing the exposition of the law to a question of philology

and verbal criticism instead of a question of reason and Justice. Used as a statement of principle and rules applicable to cases clearly withtin their scope, and not as restraints upon the Judge in reference to other cases, which are not provided for, and which require a new application of principles, i, e, the principle of right and Justice governing analogous cases, codes may not only be admissible, but may be of great service in systematizing and perfecting the law. They should never be employed for the purpose of giving to the law a crisp iron fixity of form, and thereby repressing all progress and imposing a deleterious and smothering restraint upon society itself.

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FEDERAL COURTS

SUIT BY AN ASSIGNEE—THE MATTER IN DISPUTE THEREIN—WHEN AN ASSIGNEE MAY SUE:—Section one of the Judiciary act of 1875 prohibiting the assignee from bringing an action in the Federal Courts, unless his assignor might have done so, has sole reference to the assignor's right to maintain such suit on account of his citizenship and not to the amount of the claim in dispute—*Hammound* v *Cleveland*,—(Deady J)—Chicago Leg. News. March 7, 1885.

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CONSPIRACY TO PREVENT THE COLLECTION OF A TAX—LIABILITY THEREFOR.—The plaintiff being the holder of certain County bonds, obtained a Judgement against the county and subsequently obtained a writ of *mandamus*, requiring the County Court to levy a tax to pay the Judgement. Certain ci'ti'zens, formed an association for the purpose of resisting the collection of the tax and succeded in preventing its collection. Therupon suit is brought against those who entered into this association or conspiracy. *Held* that they are liable to plantiff in damage.—*Findlay* v. *McAllister*,—(Woods J)—(Dissenting Miller and Field)—Cent L. J. March 6th. 1885.

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WILL—REVOCATION BY THE BIRTH OF CHILD—EFFECT OF PROBATE.—Where a testator devises all his proyerty to his wife, who is at the time *enciente*, and makes no mention in his will of his unborn child, the child will be entitled to his share in the estate, the same as thouugh the father had died intestate. The effect of the probate of a will is conclusive only as to its due execution. Where such will is pending and the rights of the infant, born subsequent to the date of the will. have not been adjudicated, and a portion of the land bequeathed under the will has been condemed for right of way for a railroad, and the damages therefor paid to the widow, the rights of such child may be adjudicated in an action to quiet title instituted by the railroad company.—*C. B. Q. R. R.* v. *Wosserman*,—(Brewer J)—C. C, D. N, Jan. 12 1885.—Federal Reporter March 10 1885.

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BOOK AGENTS—SALE OF BOOKS BY SUBSCRIPTION—CONTRACT BY AN AGENT OF SUCH BOOKS TO SELL IN QUANTITIES TO A PUBLISHER OR BOOKSELLER.—THE RIGHTS OF THE AUTHOR.—The plaintiff is the author and publisher of a book entitled "Huckelberry Finn." His agents in New York City for the sale of the work, on the subscription plan, contracted with the defendants to sell and deliver to them a certain quantity of said books. The defendants thereupon listed the book on their catalogue and quoted a price 50 cents less than the publishers price. Thereupon the plantiff brings this action and prays that an injunction may issue restraining defendants from advertising said book at a price below that fixed by the author and publisher. *Held*, that in the absence of notice of any contract between the publisher and his agents for the sale of a book by subscription at a certain price, any one may lawfully buy or contract to buy such books from agents who have lawfully obtained them and having done so may sell them at any price they may chose. *Clemens* v. *Estes*,—(Colt J)—C. C. D. M., February 10 1885.—Federal Reporter March 10 1885.

CORPORATIONS—FRAUDULENT SALARY—ACTING WITHOUT INSTRUCTION OF DIRECTORY. Where an officer of a corporation owning a majority of the stock, thereby secures a control of the directory and through such control secures a majority vote, giving to himself a greater salary than is equitable or right, he cannot maintain an action at law for the collection of such salary. Mere error of Judgment on the part of the directory in voting too large a salary will not constitute defense to its payment. In an action by the president of a corporation for his salary, the company cannot plead by way of set-off a wrongful expenditure of funds, if such expenditure was made in good faith and with in the reasonable scope of his authority.—*Davis* v. *Memphis City Ry. Co.*—(Hammound J)—C. C. W. D. Tenn, Feby 6 1885.—Federal Reporter March 10 1885.

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SUP. COURT OF CALIFORNIA.

FIXTURES—ANNEXED BY TENANT.—RENEWAL OF LEASE.—A tenant for a term of years erected a house and barn on the premises leased, and at the expiration of the term his lease was renewed for another term, the tenant agreeing therein to surrender the premises at the end of the term in as good condition as he found them. *Held* that the buildings erected had become fixtures annexed to the freehold and the tenant was not entitled to remove them. See Merritt v. Judd 14 Cal. 60: Jungorman v. Bovee 19 Cal. 355: The supreme court of Massachusetts in Watriss v. Nat. Bank 124 Mass. 571 said "when the same tenant continues in possession under a new lease contaning different terms and conditions, making no reference to the old lease, reserving no rights to the lessee in fixtures annexed during the previons term and not removed before its expiration, and containing the covenant to deliver up the premises at the end of the term in the same condition, this is not the extension of or holding over under an existing lease; it is the creation of a new tenancy. And it follows that whatever was a part of the freehold, when the lessee accepted and began his occupation under the new lease, must be delivered up at the end of the term, and cannot be severed on the ground that it was put in as a trade fixture under a previous lease which has expired".—*Marks* & *Ryan*—(Sharpstein J.)—Filed Jany 31, 1883.

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SUPREME COURT OF KANSAS.

SALE IN FRAUD OF CREDITORS—INSTRUCTIONS TO JURY—PRESUMPTIONS.—KNOWLEDGE OF VENDEE.—A party purchased a stock of groceries and unsettled accounts of about $3000 in value, from a firm who were being pressed by their creditors, of which fact the purchasers had knowledge. The transfer was made in apparent haste without any inventory. The vendors and their clerk remained in the store, alleging that they were employed by the vendee and they continued to conduct the business. The payment was made by the vendee by check upon a bank with which he was connected, and the greater part of the amount so paid was subsequently deposited in the same bank by the vendor, to the credit of the wife of one of the parties interested in the bank, as was alleged, in payment of debt due to her husband. *Held* in an action by the creditors to set aside the sale on the ground of fraud, that the evidence sustained the verdict in the lower court setting aside the sale. In the trial of the case the court instructed the Jury that "a sale made out of the usual course of business, is evicence of fraud." *Held* that such instruction was not error. When the conduct of the debtor necessarly results in defrauing his creditors, he is presumed to have foreseen and intended that result. *Held* also that actual knowledge by the vendee of fraudulent intent of the vendor is not necessary, but such knowledge as would put a prudent man upon inquiry is sufficient to render the sale void.—*Gollober* v *Martin*,—(Horton J)—Filed March 7 1885.—Kansas Law Journal.

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SUPREME COURT OF MICHIGAN.

MUNICIPAL CORPORATION—RIGHT TO ESTABLISH A PUBLIC MARKET.—NOT LIABLE

FOR DAMAGES CAUSED TO ADJOINING PROPERTY. The City of Detroit having established a public market, plantiff being the owner of property in the vicinity, suffered damages as he claimed, and brought an action therefor against the city. *Held* that the city was not liable for damages. Market places in large towns are a convenience to the public, and their establishment is a legeslative act. A legeslative act can never be construed as a legal wrong however injurious it proves to private interests. See Detroit v Beekman 34 Mich, 125; The matter is one of market regulation, which is vested in the city, and the court cannot, supervise municipal action.—*Hankel* v *City of Detroit.*—(Cooley J) —Filed October 1882.

WILL—DISTRIBUTION OF PERSONALTY. A testator directed in his will as follows "after all charges are paid, to be divided among my legal *heirs* according to the laws of Michigan". The residue was personalty. *Held*, that the statute of distribution and not the statute of decents should govern in the distribution of the residue. In respect to personal property the word *heir* is taken to mean "next of kin." see Gettings v McDermot 2 My, & K, 69, see also Vaux v Henderson 1 Jac, & W. 388. Price v Lockley 6 Beav, 180. In the case of Stevens, Trusts, L. P. 15 eq, 171 the expression "to the heirs of my late brother, Joseph Stevens" was held to intend his next of kin, see also in Re Jeaffreson's Trusts L. R, 2 eq, 276. In Ferguson v Stuart's Ex'rs 214 Ohio 140 in a gift of money to the husband's *heirs* it was *held* that the wife was entitled to share.—*Hascall* v *Cox*,—(Cooley J) Filed in October 1882.

MINNING LEASE — SURFACE SUPPORT — EJECTMENT. In the sale of land reserving the minerals with the right of mining the same the general rule is that in operating the mine the surface rights must be respected and propper supports left in the excavation. See 6 El. & Bl, 643: 12, Q. B. 739; Ejectment will not ordinarily lie against the sinking of a shaft as means of access to the mine. or for the land necessarily occupied thereby. — *Erricson* v. *Mich. Land & Iron Co.*—(Campbell J.)—June 1883.

SUP. COURT OF MASSACHUSETTS.

WILL—REVIVAL OF A FORMER WILL BY CANCELLATION OF A LATTER.—Where a latter will contains a clause expressly revoking a former will, and the latter will is cancelled does the cancellation revive the former will? This question has been much discussed and decisions of different courts are in conflict upon the point. See Usticke v Bawden 2 add, 116: Moore v. Moore 1 Phillim 406: Wilson v, Wilson 3 Phillim 543; Welch v Phillips 1 Moore P. C, 300. In each instance it seems to be a question of intention to be gathered from all the circumstances in the case.—*Piekens* v. *Davis*,—(Allen J.)—Filed Feby, 1883.

CARRIER—SEIZURE BY LEGAL PROCESS—CONVERSION. The defendant received goods for transportation to Cincinnati. After their arrival at Cincinnati and whilst stored in defendants warehouse, the next day after being so stored, they were attached by creditors of the consignee, and were taken possession of by the officer. The day subsequent to their seizure the shippers telegraphed defendants to hold the goods and not deliver them to the consignee. The goods already being in possession of the officer, the defendants could not comply, and they were subsequently delivered to tne consignee by the officer, upon settlement of the claim upon which the attachment issued, and plaintiff brings this action for wrongful conversion. *Held* that defendant was not liable.—*French* v *S. U. T. Co.*,—(Morton J.)—Filed Feby, 1883.

SUPREME COURT OF MINNESOTA.

LIBEL—WHAT WORDS ARE ACTIONABLE —MEANING OF WORDS DERIVED FROM THE CIRCUESTANCES SURROUNDING THE PUBLICATION.—Some third party caused an advertisement to be insertion in a paper published by defendant to this effect, viz: "Wanted

E. B. Zier M. D. to pay a drug bill," and in another instance, in like manner, was published the following, "Wanted—to pay his room rent and not go dead-heading his way." Some one cut the said card out of the paper and sent it by mail to plaintiff. Plaintiff thereupon brought an action for libel, and obtained judgment. The defendant appealed and the judgment of the lower court was affirmed. In rendering the opinion Judge Gilfillan said "we do not think that the words, in themselves, are defamatory on their face; for the words standing alone would suggest that the plaintiff owed a drug bill and that the creditor wished him to pay it; and nothing wrong is, necessarily imputed to him.

But words which may be innocent within themselves may be rendered libelous by the place and circumstances of their publication; for such place and circumstance may impress upon them a meaning and suggestion which, standing alone, they do not have.

Thus though the words here do not of themselves impute wrong, they might be published in such a place and under such circumstances as to make them capable of naturally conveying the impression that plaintiff had been guilty of dishonest practices, either in contracting the debt or witholding payment of it.***What meaning they would naturally convey was for the jury to determine.*** It was for the jury to say whether sending the postal card, by a third person, was a natural consequence of defandants publication in the newspaper."—*Zeir* v. *Hoffin*,—(Gilfillan J.)—N. W. Rep.

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NEW YORK COURT OF APPEALS.

BILL OF LADING—LIABILITY OF CARRIER FOR MISREPRESENTATION IN.—E. W. Peck & Co., of Kansas City Mo. shipped by defendant railroad thirty barrels, which were alleged hy them to contain eggs, to O. R. F, in New York, and received of the railroad company a bill of lading in the usual form. The shipper annexed to the bill of lading a draft for the value of the eggs, sent the same forward, and it was accepted and paid by plantiff before the consignment was received. Upon receipt of the barrels they were found to contain nothing but sawdust. The plaintiff thereupon brings an action against the railroad company on the grounds of misrepresentation in the bill of lading, in which the goods were described as consisting of eggs. *Held* that the description in the bill of lading was not a representation by the carrier that the barrels contained eggs, and defendant was not liable to the plaintiff for the loss by reason of the fraud.—*Miller* v *H. & St. J. R. R. Co.*,—(Andrews J)—Filed Nov. 28, 1882.

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HUSBAND AND WIFE–SEPARATE ESTATE OF WIFE—LIABILITY OF WIFE'S ESTATE.—Mr. Dederer, the husband of defendant, who was imsolvent, purchased some live-stock and gave note, also signed by his wife, in payment therefor. The plaintiff obtained judgment against the husband on the note. and an execution issued thereon, was returned *nulla bona*, whereupon proceedings are commenced to charge the wife's separate estate. *Held* that her separate estate could not be charged with the debt under the evidence in the case. See rulings in Jarmin v Wilkerson 7 B. Monore (Ky.)293: Coleman v. Wooley 10 B, Monroe (Ky.)320: Smart v Comstock 24 Barbour (N. Y.) 411; The judgment of the trial court and affirmed by the supreme court in favor of plaintiff is reversed.— *Vale* v. *Dederer*.—(Comsblock J.) —18 New York 4 Smith.

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SUPREME COURT OF WISCONSIN.

WATERCOURSE—OBSTRUCTION THEREOF—WHAT CONSTITUTES A WATERCOURSE,—In the case of Hoyt v Hudson 27 wis. 656 Justice Dixon defines a watercourse as follows. "There must be a stream usually flowing in a particular direction, though it need not flow continually. It may sometimes be dry. It must flow in a difinite channel having a bed, sides or banks, and usually discharge itself into some other stream or body of water. It must be something more that a mere surface drainage over the entire tract of land occasioned by un-

usual freshets or other extraordinary causes."

Where a party erects an embankment for the purpose of protecting his land from an overflow from mere surface water and thereby causes it to flow upon his neighbors land, he is not liable as in changing a natural watercourse.—*Lessord* v *Strahm.*—(Taylor J)—Chicago Leg. News, Feby. 28, 1885.

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ENGLISH COURT OF APPEAL.

ASSIGNMENT OF STOCK IN TRADE—TO INCLUDE FUTURE ACQUIRED STOCK. Plaintiff loaned money to one M. and received as security a bill of sale of a stock of Jewelery with the understanding that all future acquired stock should be included under the assignment. M. having acquired certain goods, subsequently delivered them to a pawn broker in pledge for money loaned. Plantiff thereupon brings this action in trover against Lyon, the pawnbroker to recover the goods. Upon appeal it is *Held* that plaintiff by the bill of sale aquired only an equitable interest in the goods, which defendant, by actual delivery to him accquired, the legal title and that an action in trover will not lie. Judge Britt in his opinion said "An assignment of goods to be acquired is only a contract to give the after acquired goods when they are got. A man cannot in equity, any more than in law, assign that which has no existence. A man can contract to assign property which is to come into existance, and when it is created, equity, treating as done that which ought to be done, attaches that property, and the contract to assign thus becomes a complete assignment in equity. Then if the plantiff's title was only equitable, in whom was the legal title to the goods? It was in M. and by delivery to defendant he confered upon defendant the legal title." —*Jiseph* v. *Lyon*—(Britt J)—English Court of Appeal.

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A WAS employed by M at at salary of $1,800 a year, after he had refused to accept employment for a shorter time. He continued under the salary after the expiration of the year, but was discharged three months later and without cause. He sued for the salary for the ballance of the year and recovered a judgment. An appeal was taken in the case. Alba v. Moriaty to the Supreme Court of Louisiana, where the judgment was affirmed. Jndge Todd, in the opinion, said: "Before a certain date M had mentioned to A that the time of his first engagement was out, but did not propose any new terms, expressed no dissatisfaction to A himself, and diliverd him, on one occasion, samples to be taken with him on one of his country trips. There was no want of opportunity to dircharge A, or to make a new engagement with him. A defense was set up that the discharge was made on the ground of irregularity in A's collections, but as M testified that he had made the discharge before he discovered these irregularities they could not have entered into the reasons of his discharge. Even if they had, the evidence shows they were not of a character to have jusified the discharge; they were evidently and after thought and a mere pretext. The contract was a continuing one, terminable by mutual consent, or by timely uotice at or before the expiration of the year, and for a breach of it, which could not be justified, on the part of the employer, he must respond in damages to the plantiff for the balance of the year's salary, if he could not obtain other employment, or for any falling off of salary.

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SUPREME COURT OF NEW JERSEY.

NOVEMBER TERM 1882.

Conway v. *Halsey.*

AN action by a stockholder in a National Bank against the officers for Mismanagement, will not lie.

The substance of the declartion was to the effect following, viz: That for a long time prior to and on the 31st of October 1881, the defendants had been and were the directors of the Mechanics' National Bank of Newark, and had taken the oath of their office as prescribed in section 5147 of the Revised Statutes of the United States, that they severally would so far as the duty devolved upon them respectively, diligently and honestly administer the affairs of the said bank, and that it thereby became their duty to guard and properly and carefully to

manage the property and assets of said bank intrusted to their charge for the use, benefit, and advantage of the plaintiff as one of the stockholders of the said capital stock of said bank, in such manner as to protect the said property from being diverted from the object for which said property and assets had been created and acquired from being purloined, embezzled, improperly abstracted or misused A contract on the part of the defendants to perform the duties above specified was then laid, followed by a breach which consisted in permitting the cashier of said bank to control and manage the bnsiness of the bank and to apply the money and property of the bank as suited his inclination, and without reasonable supervision of the defendants, and whereby the said cashier was enabled and did make away with the entire capital of said bank and it became largely insolvent.

C. Borcherling, for plaintiff.

John W. Taylor. for defendants.

BEASLEY, C. J. Since the decision in the case of *Smith* v. *Hurd*, reported in 12 Metc. 371, and which occured in the year 1847, I do not find that it has any where been doubted that an action will not lie in behalf of a stockholder in a corporation against its directors for their negligence in so conducting its affairs that its capital had been impaired or lost and the shares of its stock in that manner rendered worthless.

That judgment, with respect to its constituent facts, was identical whith the transaction described in the present declaration, for the complaint in that instance was that the directors of a corporate company had by their malfeasance in delegating the whole control of its business to its president and cashier, occasioned the waste and loss of its entire capital. The adjudication was rested on general principles which lie at the basis of all corporate existence. These were, in substance, the following viz.: That there is no legal privity between the holders of shares in a corporation, in their individual capacity on the one side, and the directors of such company on the other; that the directors are not the bailees, agents or trustees of such several stockholders; that the corporation is a distinct person in law, in whom all the corporate property is vested, and to whom all its agents and officers are responsible for all torts and indjuries diminishing or impairing its property; that the individual members of the company have no rigth or power to intermeddle with the property or concerns of such company, or to call any agent or officer to account, or to discharge them from any liability; that the injury done to the capital by wasting it is not in the first instance, nor necessarily, a damage to the stockholders; that all sums which could in any form be recovered on that ground would be assets of the corporation, to be applied in the first instance to the payment of debts, the surpules only being distributable among the stockholders, and that it is therefore only an indirect, contingent and subordinate interest in damages so to be recovered that is vested in shareholders. These are the main grounds leading to the decison in the case referred to, and such grounds are so plainly just and reasonable that they appear to have been adopted in each of that series of authorities on the subject that are to be found by a reference to any of the text-books. Thomp. Liabil. Directors, 351; Field Corp., § 328.

The legal effect of the doctrine thus established is that those acts of the officers and agents of the corporation which diminish or destroy the capital of the company are direct injuries to the corporated body, and that it only can seek reparation for such wrongs. And in such cases, if the direrors or other principal officers are the wrong-doers, or if not being thus implicated, they refuse to promote the requisite suit, a stockholder, acting for himself and the other stockholders and for the company, may call such delinquent officials to account in a court of equity. The theory is that under the given conditions the corporation is entitled to indemnification, and that when this is effected the stockholder ceaser to be a loser. As to the right of the shareholder

to become an actor in equity to repair a corporated injury, when the directors refuse to perform such function, see the case of *Trenton Bridge* v. *Trenton City Bridge*, 2 Beas. 46.

To the extent of the legal rules established by the train of cases to which reference has been thus made, I did not understand upon the argument that any contention was raised, the plaintiff's case being placed exclusively on the basis of the force of the five thousand two hundred and thirty-ninth section of the National bankrupt act. The section thus relied on is in there words: "If the directors of any National banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this title, all the rights, privileges and franchises of the association shall be thereby forfeited. Such violation shall however be determined and adjudged by a proper Circuit, District, or Territorial Court of the United States, in a suit brougt for that purpose by the comptroller of the currency in his own name, befor the association shall be declared dissolved. And in cases of such violations, every direstor who participated in or assented to the same shall be held liable, in his personal and individual capacity, for damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation."

It is insisted that the clause of the above-recited provision which relates to the violations of this law by the officer of a National bank, applies to the circumstances stated in this declartion, and renders the defendants liable to this action. The position is not tenable. The act declares that the charter of any of these banks shall be forfeitable if the directors knowingly violate certain provisions of the statute, and it is for a violation of such provision that a personal responsiblity is imposed on such officers. When the act of the officers has been such that its effect will be to put the institution out of existence, then, and then only, are they made liable to the private suit of the stockholder or other person injured by their willful disobedience of the requirements of the law. As it is entirely unreasonable therefore to infer that it was the legislative intention that the charters of these valuble institutions should be liable to be lost by reason of any negligence and want of care of their directors, it necessarily follows that such negligence and want of care will not lay the basis of a suit of a shareholder against them. The banking act organizes these financial institutions, and establishes various fundamental regulations to which the are required strictly to conform, and it is quite in keeping with the purpose and spirte of this law to find in it a declaration that if the directors should willfully disobey any of such fundamental injunctions, the penal consequence should be that they should make good not only the loss thence resulting to the corporation, but also that occasioned to individuals by their malfeasance. The plaintiff's case is not brought within the scope of this remedial clause of this section, inasmuch as it does not show a willfull violation of any one of such fundamental regulations. There is also another objection to the application of this section of this act to the plaintiff's case. When the clauee in question gives a private remedy, derived from the misconduct of the directors, to the individual stockholder, the only reasonable deduction from the words and purposes of the law is that such redress is aimed at injuries directly and not indirectly falling on such stockholder. In the present ease, the injury is indirect and derivative; the plaintiff has suffered to a loss because the property of the corporation was squandered, purloined or lost. Now for such a loss the statute gives to the company the right to obtain an indemnificaton by suit, and by such recovery the indirect and derivative loss of the stockholders is, *ipso facto*, repaired.

For the sake of example, let us say that the capital of the bank is $500,000, which is purloined or lost by the misconduct of the

directors; the stock thus becomes worthless because the company is made insolvent, but if the corporation sue the directors and recover as damages their entire capital, full value is restored to the stock of the members. It follows therefore that unless we impute to the persons passing this act the design to provide for a duplicate reparation for the misconduct of these officers, first, to the corporation, and then second, by way of duplication to each member of the bank, it is clear that what I have called these derivative injuries are not those for which an independent remedy is provided in favor of each member of the company. This consideration derives an increase of weight from the circumstance that the same remedy that is given to the stockholder is affored "to any other person," and if this action can be sustained, so would an action be sanctioned that should be brought by any creditor of the insolvent bank. In the suit of *Ackerman* v. *Halsey*, Mr. Justice Depue, sitting in the Essex Circuit, considered this same question, and after having examined the subject with care, as appears from the opinion prepared by him, came to the same conclusion as that above expressed.

It has been deemed advisable to dispose of this case on its legal merits as they were presented in the discussion of counsel at the bar, rather than to confine our attention to the statements of the declaration, which is obviously so imperfect that it does not exhibit the real question in controversy. Regarding the matter in this extended sence, the defendants are entitled to judgment on this demurrer.

———o———

UNITED STATES CIRCUIT COURT, RHODE ISLAND, MARCH 12, '83.

HAYDEN v. ORIENTAL MILLS.

An action for damages for infringement of a patent may be barred by the statute of limitations of the State in which it is brought.

ACTION for infringment of patent. The opinion states the case.

J. L. S. Roberts, for plaintiff.

Benj. F. Thurston, for defendant.

LOWELL, J. The plaintiff brings this action on the case for infringements of his rights under a patent. The defendant pleads that the infringement, if any, occurred more than six years before action brought, which is a bar by the statute of Rhode Island. Pub. St., ch. 205, § 3. The plaintiff demurs.

Several judges of great ability and experience have held that the statutes of limitations of the States do not affect actions upon patent rights, upon the theory that section 34 of the judiciary act (now Rev. St., § 721), making the law of the States the rules of decision in the courts of the United States, in actions at the common law, does not apply to actions which are within the exclusive jurisdiction of the courts of the United States. There are several able decisions on the other side, but perhaps the weight of authority is wtth the plaintiff on this point.* We give the citations in a note. This is an action at law, and if statutes in question do not apply, there is no limitation, unless it be that of Rhode Island in 1789, for a court of common law has no discretion to refuse to entertain state claims.

This result appears to us to be inadmissible. No reason is given in any decision for excepting one class of cases out of section 721. Some arguments upon the general question have been made which we shall advert to. There is no such exception in the statute itself, and none in its intent and purpose, Exclusive jurisdiction is given for

* NOTE. Thai the State statutes govern such cases; *Parker* v. *Hawk*, 2 Ficher, 58; *Parker* v. *Hall*, id. 62, note; *Rich* v. *Ricketts*, 7 Blatch. 230; *Sayles* v. *Oregon Cent. Ry. Co.*, 6 Sawy. 31; *Sayles* v. *R. F. & P. R. Co.*, 4 Ban. & A. 269. That the State laws do not govern; *Parker* v. *Hallock*, 2 Fisher, 543, note; *Collins* v. *Pebles*, id. 541; *Read* v. *Miller*, 2 Biss, 12; *Anthony* v. *Carroll*, 2 Ban. & A. 195; *Wood* v. *Cleveland Rollingmill Co.*, 4 Fisher, 550; *Wetherell* v. *New Jersey Zinc Co.*, 1 Ban. & A. 485.

reasons which are apart from this question. For instance, in patent cases the Federal courts have this control in order that the construction of the law and of the patents granted under it may be as nearly uniform as possible, not that the remedies of a patentee shall be of uniform duration. Equity is a uniform system in the Federal courts throughout the United States, but the remedies in equity are barred in those courts by the State statutes of limitations in certain cases.

Suppose Congress chooses to give assignees in bankruptcy or National Banks an exclusive right to sue in the courts of the United States, can any one maintain that their debtors have no protection by the lapse of time, unless a special statute of limitation is passed by the National authority?

This theory of the dependence of section 721 upon concurrent jurisdiction seems to be an echo of the rule that courts of equity, aud perhaps even courts of admiralty, are bound by the State statutes of limitions in cases of concurrent jurisdiction; but it is not concurrent jurisdiction of the State courts, but that of courts of common law, State or National, which decidies the point. Besides what is this concurren. jurisdiction? There are very few cases in which the jurisdiction is really concurrent. In nearly all the defendant has an absolute and conclusive right to make the jurisdiction of the Federal courts exclusive by a removal of the cause.

The truth is that section 721 is a declaratory act, announcing a general doctrine of nternational law, and the Supreme Court have so construed it. They apply it only to local matters, such as land laws, statutes of limitations, and the like, and in those cases they apply the same rule in equity, though equitable suits are not mentioned in the act; and on the other hand they refuse to apply it to general qnestions, such as those of commercial law, though when arising they are within the words of the act.

The United States, when they are plaintiffs, are not bound by such statutes of limitations; but this is because they are not bound by similar acts of Congress, unless specially mentioned and they are not mentioned in section 721. It is said that the States cannot declare when actions on patent right shall be barred. Very true, but neither can they bar any actions in the Federal courts. The bar arises from the constitution and situation of those courts, the general international law, and section 721. If not, it would seem to follow that there is no limitation, or that it depends upon the law of Rhode Island in 1789, as in *United States* v. *Read* 12 How. 391, in which the court, finding that section 721 did not apply to criminal cases were obliged to find some law, and went back to the origin of the government.

To us it seems as inadmissible to say that section 721 does not apply to patent cases, as that the law adopting the practice of the States does not apply to them. In one particular it perhaps does not, because the statute says that an action on the case shall be the remedy. This is a reproduction of the old law which was passed when all the States had that form of action, and it may not now be an exclusive remedy; but no one can deny that in other respects the process and procedure act apply to actions at law for the infringement of patent rights. A dozen questions may arise in any patent case which can only be decided by the law of the State. There is no doubt, of course, of the right of Congress to make a statute of limitations for patent causes. The power is specially reserved in section 721, and by the act of 1870, section 55 (16 St. 206), they made such a law, which provides that all actions shall be brought within the term for which letters-patent shall be granted or extended, or within six years thereafter. Congress, when they passed this act, may have supposed that there was no limitation; but if so they found out their mistake, for they repealed this part of the patent law, when they passed the Revised Statutes, by omitting it from the chapter on patents. *Sayles* v. *Oregon Central Ry. Co.* 6 Sawy. 31

Vaughn v. *East Tenn., etc. R. Co.*, 1 Flip. 621. When they thus repealed the act of Congress, the State law became again applicable to future infringements, but one of the repealing sections (section 5599) reserves all existing causes of action, so far as limitations are concerned, precisely as though no repeal had been made. *Sayles* v. *Oregon Central Ry. Co.*, *supra*; *Vaughn* v. *East Tenn., ect. R. Co.*, *supra*.

The plaintiff declares upon a patent granted in 1857 and extended in 1861, expiring in 1878, and alleges damage for the whole period of 21 years. The plea which merely sets up the bar of six years before action brought, does not fully answer this declaration in the view we have taken of the law, because granting that when the act of 1870 was passed, an action for a part of the damages was barred, and granting that all causes of action which have accrued since the act was repealed, and more than six years before the service of the write are barred, there may remain, for any thing that appears by the declartion, certain rights whice are saved by the very strong language of the repealing act. The percise effect of these acts and repeals will come up more properly at the trial, under a modified plea, if one should be filed. It is plain that the plea is too broad and must be overruled.

———o———

SUPREME COURT OF THE UNITED STATES.

NOVEMBER 1882.

National Steamship Co. v. *Tugman.*

REMOVAL OF CAUSE BY FOREIGN CORPORATION—CITIZENSHIP OF THE MEMBERS OF CORPORATION—CITIZENSHIP SHOWN BY THE RECORD—FAILURE TO FILE TRANSCRIPT IN TIME.

IN error to the Supreme Court of the State of New York. The opinion states the facts. Harlan, J.—The underlying question in this case is whether, within the meaning of the Constitution and of the statutes determining the jurisdiction of the Circuit Courts of the United States, and regulating the removal of causes from State courts, a corporation, created by the laws of a foreign State, may for the purposes of suing and being sued in the courts of the Union, be treated as a "citizen" or "subject" of such foreign State?

In *Ohio and Mississippi Railroad Co.*, v. *Wheeler*, 1 Black, 296, the court, by Chief Justice Taney, said, that in the previous case or *Louisville, Cincinati & Charleston Rail road Co.*, v. *Letson*, 2 How. 497, it had been decided upon full consideration, "that where a corporation is created by the laws of a State, the legal presumption is, that its members are citizens of the State in which alone the corporate body has a legal existence; and that a suit by or against a corporation in its corporate name, must be presumed to be a suit by or against citizens of the State which created the corporate body; and that no averment or evidence to the contrary is admissible, for the purposes of withdrawing the suit from the jurisdiction of a court of the United States". *Marshall* v. *Baltimore and Ohio R. R. Co.*, 16 How. 314; *Covington Drawbridge Co.* v. *Shepherd*, 20 id. 232; *Ins. Co.* v. *Ritchie*, 5 Wall, 542; *Paul* v. *Virginia*, 8 id 178; *Railroad Co.*, v. *Harris*, 12 id. 82.

To the rule thus established by numerous decisions the court adheres. Upon this branch of the case it is therefore only necessary to say that if the individual members of a corporation, created by the laws of one of the United States, are for purposes of suit by or against it in the courts of the Union, conclusively presumed to be citizens of the State by whose laws that corporation is created and exists, it would seem to follow logically that the members of a corporation, created by the laws of a foreign State, should for like purposes be conclusively presumed to be citizens or subjects of such foreign State. Consequently a corporation of a foreign State is, for purposes of jurisdiction in the court of the United States, to be deemed, constructively, a citizen or subject of such State.

But it is suggested that the petition for the

removal of the action into the Circuit Court in of the United States is radically defective that it does not show that the National Steamship Company was a corporation of a foreign State at the commencement of the action; that the allegation upon that point refers only to the time when the removal was sought. If—in suits in which the jurisdiction of the courts of the United States depends upon the character of the parties, — it is material under the act of March 3, 1875, to show what the citizenship of the parties was at the commencement of the action, it is sufficient to say that the averment in the original complaint, that the company is a foreign corporation, supplemented by the averment, in the petition for removal, that it is a corporation created by and existing under the laws of the United Kingdom of Great Britain and Ireland, covers the whole period from the commencement of the action to the application for removal. It is not always necessary that the citizenship of the parties be set out in the petition for removal. The requirements of the law are met if the citizenship of the parties to the controversy sought to be removed is showen affirmatively by the record of the case. *Railway Co.*, v. *Ramsey*, 22 Wall. 322; *Robertson* v. *Cease*, 97 U. S. 648.

The only remaining question which need be considered is whether the jurisdiction of the State court was in any form restored after the company filed its petition and bond for removal. The defendant in error insists that it was. The petition was accompanied by a bond, which it is conceded, conformed to the statute and was ample as to security. Upon the filing therefore of the petition and bond, — the suit being removable under the statute, — jurisdiction of the State court absoluteley ceased, and that of the Circuit Court of the United States immediately attached. The duty of the State court was to proceed no further in the cause. Every order thereafter made in that court was *coram non judice*, unless its jurisdiction was actually restored. It could not be restored by the mere failure of the company to file a transcript of the record in the Circuit court of the United States within the time prescribed by the statute. The jurisdiction of the latter court attached, in advance of the filing of the transcript, from the moment it became the duty of the State court to accept the bond and proceed no further; and whether the Circuit Court of the United States should retain its jurisdiction, or dismiss or remand the action because of the failure to file the nessecary transcript, was for it, not the State Court, to determine.

Nor was the jurisdiction of the State court restored when the company subsequently consented to the order requiring the issues to be heard and determined by a referee selected by the parties, or when it appeared and contested the case, as well before the referee as in the State courts up to final judgment. The right of the company to have a trial in the Circuit Court of the United States became fixed upon the filing of the petition and bond, But the inferior State court having ruled that the right of removal did not exist, and that it had jurisdiction to proceed, the company was not bound to desert the case, and leave the opposite party to take judgment by default. It was at liberty, its right to removal being ignored by the State court, to make defense in that tribunal in every mode recognized by the laws of the State, without forfeiting or impairing, in the slightest degree, its right to a trial in the court to which the action had ben transferred, or without affecting to any extent the authority of the latter court to proceed. The consent by the company to a trial by referee was nothing more than an expression of its preference — being compelled to make defense in the State court — for that is one of the several modes of trial permitted by the laws of the State. It is true that when the case was taken up by the fereree, as well as when heard in Supreme Court of the State and in the Court of Appeals, the company protested that the Circuit Court of the United States alone had jurisdiction after the petition and bond

for removal were filed. But no such protests were necessary and they added nothing whatever to the legal strength of its position. When the State court adjudged that it had authority to proceed, the company was entitled to regard the decision as final, so far as that tribunal was concerned, and was not bound, in order to maintain the right of removal, to protest at subsequent stages of the trial, against its exercise of jurisdiction. Indeed such a course would scarcely have been respectful to the State court after its ruling upon the point of jurisdiction had been made.

What we have said upon this subject is fully sustained by our former decisions, particularly *Railroad Co.* v. *Koontz*, 104 U. S. 5; *Railroad Co.* v. *Mississippi*, 102 id. 135; *Kern* v. *Huidekoper*, 103 id. 485; and *Ins. Co.* v. *Dunn*, 19 Wall. 214.

The judgments herein of the Court of Appeals of New York and of the Supreme Court of New York are reversed, and the cause is remanded with directions that the latter court accepts the bond, tendered by plaintiff in error, for the removal of the cause to the Circuit Court of the United States for the Eastern District of that State and proceed no further in the cause.

—o—

SUPREME COURT OF CALIFORNIA.

OPINION FILED JAN. 13, 1885.

FITCH v. DE YOUNG ET AL.,

LIBEL—CHARGING THE PUBLISHER OF A NEWSPAPER WITH SELLING HIS INFLUENCE—Publishing the charge, that the publisher of a newspaper, for a money or valuble consideration, sold the influenee of this paper to certain Corporations is HELD to be actionable as a libel.

Appeal from a judgment of the Superior Court of the City and County of San Francisco, entered in favor of the defendant. The opinion states the facts.

F. H. RIXFORD and H. E. HIGHTON, for the appellant.

LLOYD & WOOD, for the respondents.

MYRICK J.—Action for libel, brought by the publisher of one newspaper against the publisher of an another newspaper. The article published in the latter newspaper charged the plantiff with being party to a secret conclave, in which he, the plantiff, sold the support and advocacy of the former newspaper to certain corporations, for a large sum of money.

The defendants demured to the complaint, on the ground that it did not set forth facts which constitute a cause of action, and that the alledged libelous matters were not libelous.

The demurrer was sustained and the plantiff declining to amend, judgement went for defendants.

As a journal, the only relation existing between a newspaper and the public are the relations between it and its readers; outside of its readers it has no relations with the public. It is fair to presume that its readers are such because of their sympathy or agreement with the general course of it, editorialy, is, in the main, read because its readers are in accord with its general sentiments, and desire to be able to place confidence in its general course. They have a right to presume that if a radical change occurs, the change will be from conviction, and that fair dealing will suggest that due notice thereof be given, to the end that they may, if they choose, cease to remain such. If readers of newspapers are at all honest in their own sentiments, proprietors of newspapers owe to them the duty of being sincere. It would not be sincere to do that which is charged in the article set out in the complaint. The tendency of the course charged would be to lessen the con fidence of readers, and thus to diminish their number, or change them as to charcter; in either event it might expose the proprietors to loss. We can not say that it would not expose the proprietors of a newspaper the hatred, contempt, ridicule or obloquy of its readers, or would not iujure them in their occupation, to accuse them of acts having a tendancy to lessen the confidence of its readers, or to lessen the number of its patrons. On the contrary, we think it would have that effect.

To illustrate: Suppose the proprietors of the *Call* and *Bulletin* had anounced in the colums of those papers that they had changed their course and had negotiated a sale of their support and advocacy to the railroad corporations named in the complaint, for the sum of thirty odd thousand dollars, would such an announcement have exposed the proprietors to contempt or ridicule, or have tended to injure them in their occupation?

If not, there is no libel in the article complainad of. If yea (and of this there can be no doubt), the article is foundantion for an action.

Judgment reversed and cause remanded, with instructions to overrule the demurrer, with leave to defendants to answer.

THORNTON, J., and SHARPSTEIN, J., concurred.

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NOTES OF CASES.

IN this issue we publish a decision by the Texas Court of Appeals touching the liability of telegraph companies — *W. U. Tel. Co.* v. *McKinney* — in which the rule established in some former opinions of the same court are overruled. Although the telegraph has been in use now over forty years as a means of communication, yet the principles of law fixing the rights and liabilities of the telegraph company and its patrons are by no means well settled.

How far telegraphic companies are common carriers; to what extent they have a right to avoid their liability for negligence; what the rule of damages is for failing to send a message correctly; whether the recipient can recover damages for a mistake, or only the sender, — these and many other questions are yet to be difinitely settled in this country. If the numerous rules, regulations, and exceptions found on the blanks of a telegraph company's forms were all valid, the company would in no case be liable for damages. The courts have been obliged to hold that public policy forbade the company to shirk its duty as a common carrier to such an extent. A new institution, the telephone, of more recent growth than the telegraph company, forms a new factor and in cases touching upon the corporations and their rights and liabilities, in the application of old principles to new cases, the rules established are in many cases in conflict with each other.

A SHERIFF was on his way to attach the land and personal property of a debtor, and stopping over night at the house of plaintiff, who was a creditor of the defendant against whom the attachment was about to be served, gave plantiff notice of where he was going and of the service he was going to make. The plantiff started hastily, and arriving in advance of the sheriff, offered the debtor a certain amount for his property which was accepted. A bill of sale was made of all of said property and delivered to him. One hour later the sheriff arrived

when the plantiff informed him that he had purchased the property and exhibited to him the bill of sale. The sheriff, disregarding plantiffs claim of ownership, seized the property.

This action is brought against the sheriff for a wrongful levy. Judgement was rendered in the trial court for plaintiff and defendant appealed -- *Camaita* v. *Kyle* — Sup. Court of Nevada — where the Judgment was reversed. Judge Leonard in the opinion, said: "The delivery of a bill of sale was not even a symbolical delivery of the personal property described in it. Nor did the departure of L from the place with the general declaration that he left C in possession of everything amount to a delivery and the taking possession of the charcoal and wood. Undoubtedly the plaintiff might have taken possession of the personal property in some proper manner before the levy, and had he done so there would have been a complete delivery and change of possession."

THE Bradstreet commercial Agency made the following report concerning an elevator in Minneapolis: "This elevator has been condemned as unsafe, and the Chamber of Commerce declines to accept or do business with their wheat checks. The facts of the case seem to be that Locke has misled the other investors, and put up a building which is unsafe for business and stands idle. The investors seem to regard themselves as having been victimized. The company cannot be considered as having a basis of any credit."

An action was brought dy *Locke* v. *The Bradstreet Company* for damages for having made a false and damaging report, and it was recently decided, in the U. S. Circuit Court for the District of Minnesota, in favor of defendant. Judge Nelson in charging the Jury instructed them as follows: "It is my duty to instruct you that every willful and unauthrized publication, written or printed, which imputes to a merchant or other business-man conduct which is injurious to his character or standing as a business-man or merchant is a libel, and implies malice; but whenever the author or publisher acting in the bona fide discharge of a public or private duty, legal or moral, or in the prosecution of his own rigths and interests, that which is communicated in writing under such circumstances is a privileged communication unless it is actuated by malice. If it is a privileged communication then, although the statements are defamatory, actual malice must be proved to entitle the aggrieved party to recover damages. A communication is privileged within the rule when made in good faith in answer to one having an interest in the information sought, and it will be privileged when volunteered if the party by whom it is made stands in such relation to him as to make it a resonable duty, or at least proper that he should give the information. Applying the rule here, it being in proof that the defendant communicated the alleged libelous matter to its subscribers in Minneapolis and Duluth, who had an intrest in knowing it, and the communication is also volunteered to other persons who stood in such relations to the defendant as to make it a resonable duty or proper that such information should be given, so that the conduct of the defendant consists of answers in writing to inquiries made or volunteer information given to those who had an interest in it and there was just occasion for imparting to them. Therefore I instruct you that the imformation given was a privileged communication. You must determine whether this privileged communication was defamotory and actuated by malice. In a case like this the falsehood of the statement and the absence of probable cause will amount to a proof of malice; and if you find that the statement was made without exercising ordinary care and caution in collecting the information, and without reason to believe in its truth, you will find for the plaintiff; but if you find that the plaintiff has not rebutted the presumption which attaches to the statement as a privileged communication, then the defendant is entitled to a verdict." The jury gave the defendant a verdict.

THE Federal board of commissioners oppointed under the act of March 22, 1882, to have supervision in certain matters in the goverment of Utah, were defendant in a case recently (March 23rd) dicided in the Supreme Court of the United States. The election officers appointed by this board, required of applicants for registry that they swear that they are not maintaining bigamous relations in violation of the law. The exercise of this right was made the question in litigation. The Supreme Court holds that these requirements were without authority and void.

In conclusion, Justice Matthews, who delivers the opinion of the court, says with reference to the constitutionality of the above-mentioned act: "Counsel for the appeliants in the argument seemed to question the constitutional power of Congress to pass the act of March 22, 1882, so far as it abridges the rights of electors in the Territory under the previous laws. But that question is, we think

NO LONGER OPEN TO DISCUSSION.

It has passed beyond the stage of controversy into final judgment. The people of the United States, as sovereign owners of the national territories, have supreme power over them and their inhabitants. In the exeicise of his sovereign dominion they are represented by the Government of theUnited States to whom all powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the constitution or necessarily implied in its terms, or in the purposes and objects of the power itself.

In ordaining a government for Territories and the people who inhabit them all the discretion which belongs to the legislative power is vested in Congress, and that extends, beyond any controversy, to determining by law from time to time the form of local government in a particular Territory and the qualifications of those who shall administer it. It rests with Congress to say whether in a given case any of the people resident in a Territory shall participate in an election of its officers or the making of its laws; and it may therefore take from them any rigth of suffrage it may previously have conferred, or at any time modify or abridge it, as it may deem expedient. * * * * The personal and civil rigths of the inhabitants of Territories are secured to them as to all other citizens, by the principles of constitutional liberty, which restrain all agencies, government, State and National; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States If we concede that this discretion in Congress is limited by the obvious purposes for which it was conferred, and those purposes are satisfied by measures which prepare the people of Territories to become citizens of States in Union, still the conclusion can not be avoided that the act of Congress here in question is clearly wthin that justification. For certainly no legislation can be supposed more wholesome and necestary in forming a free, self-governing commonwealth to be fit to take rank as one of the co-ordinate Stats of the Union than that wich seeks to established it on the basis of the idea of the family, a consisting in and springing from the union, for life, of one man and one woman in the holy state of matrimony; the sure foundation of all that is stable and noble in our civilization; the best gurantee of that reverent morality which is the source of all beneficent progress in social and political improvements. And to this end no means are more directly and immediately suitable than those provided by this act, which endeavors to withdraw all political influence from those who are practically hostiled to its attainment."

The judgmentt of the court below in the cases of Jesse J. Murphy, Ellen C. and Hiram B. Clawson, and J. M. Barlow are affirmed as to all the defendants below and the appellees here. In the cases of Mary Ann and M. Pratt and Mildred E. and Alfred Randall, the Judgments are affirmed as to all the defendants and appellees, except E. D. Hoge, John S. Lindsay, and Harmel

Pratt. As to them the Judgments are reversed and the case remanded, with directions to overrule the demurrers.

Judge Field dissented from parts of the opinion of the Court.

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AMERICAN LAW REGISTER.

THE AMERICAN LAW REGISTER for April containg the case of *Piollet* v. *Simmers* Supreme Court of Pennsylvania in which it is *held* that the owner of land through which a public highway passes, has a right to use the highway temporarily in a reasonable manner, in derrogation of the rights of the public. Where the owner of land, engaged in whitewashing the fence adjacent to the roadway, used a barrel filled with whitewash and moved it along the way on wheels, a horse passing along the highway was afrightened thereby and become injured. *Held* that the owner of the land was not liable for damages for the injury. Also, the case of *Moore* v. *Monroe*, Supreme Court of Iowa in which it is *held* that an injunction will not be granted to restrain the reading of the bible in a public school at the suit of a taxpayer whose children are not required to be present at the reading. Also the case of *Blandy's Administrators* v. *Hall & Co.*, Supreme Court of Ohio, in which it is held that a Mortgage which is invalid as to creditors of the mortgagor, or is invalid as against his assignee for the benefit of creditors. Also the *State* v. *Nebraska Telephone Co.*, Supreme court of Nebraska herefore refered to in this JOURNAL in which it is *held* that a Telephone Company is a common carrier of news and must supply the public without discrimination.

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AMERICAN LAW RECORD.

THE AMERICAN LAW RECORD for March 1885 contains the case of *C. M. & St. P. R. R. Company* v. *Ross*, Supreme Court of the United States in which it is *held* that a railroad company is liable to a locomotive enginer for damages for injury received from the negligence of the conductor of the train; also the case of *Button* v. *Hoffman* Supreme Court of Wisconsin, in which it is *held* that one who becomes the owner of all the stock in a corporation does not thereby become the legal owner of its property and cannot maintain replevin therefor in his own name. Also the case of *Commonwealth* v. *Pierce* Supreme Court of Massachusets in which it is *held* that a druggist can be convicted of manslaughter on account of gross negligence in administering a prescription without any guilty intent. Also the case of *Wadsworth* v. *Schisselbaur*, Supreme Court of Minnesota in which it is *held* that when a creditor seeks to satisfy his Judgment out of the equitable assets of the debtor, which could not be reached on execution, he must first exhaust his remedy at law, by the issue and return of an execution unsatisfied.

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IN *Drury* v. *Young* 58 Md. 546 it is held that a Memoraudum of sale under the statute of frauds is sufficiently "signed" by the name being printed on the sheet on which the memoraudum is written. In this case a memoraudum of the sale was written on a letter head, on which the name of seller was printed, and the written memorandum appeared below.

Held that this was sufficient "signing" to bring it within the statute.

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IN *C. C. C. R. R. Co.* v. *Walrath*, 8 Cin. Law Bulletin it is *held* that a party injured in a sleeping car, by negligence of the employes, may maintain an action against the Railroad Company for damages, in the absence of notice by the Company that the sleeping car was owned and run by another Company

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REGULATION OF COMMERCE — STATES CANNOT BY ACT OF LEGISLATURE. — In the case of *Reading R. R. Co.*, v. *Pennsylvania* it is *held* that an act of the state legislature imposing a tax upon freight carried by railroads within the state was a regulation of commerce and as such, was unconstitutional.

In the case of *Crandall* v. *State of Nevada*

it is *held* that a statute of the state imposing a tax of $1.00 on each passenger leaving the state by railroad or by coach or on each passenger traveling through the state is unconstitunal and void.

The legislature of New York in 1824 passed an act imposing a penalty on the commander or owner of any vessel arriving at the port of New York who failed within a specified time, to report to the Mayor of the City a detailed statement of the number and the nationality of the passengers arriving by the said vessel. In the case of City of New York v. Miln 11 Peters, 102 where defendant resisted the imposition of this penalty on the grounds that such a statute was a regulation of commerse, it is *held* that such statute was a police regulation and within the power of the state.

In the case of *Peoples Bank* v. *Legrand*, Pa. Sup. Court, April 13, 1883 13 W. N. C. it appeared that the bank held a note made by C. and indorsed by B. The note had gone to protest, and the bank obtained Judgment against the maker of the same. Subsequently the bank agreed with C. to extend the time of payment if he would pay ten per cent interest on the same and continue his banking business with them. In the conrse of business subsequently, C. had sufficient funds on diposit to have paid the note, but the bank did not apply the funds for that purpose. In an action against B. the indorser, it was *held* that the bank was not bound to apply the funds thus obtained and that the indorser was not thereby discharged. A like rule is mantained in the case of *Martin* v. *Mechanics' Bank*, 6 Harr. & Johns 235.; also in *Voss* v. *Ger. Am. Bank*, 83 Ill. 599. In the case of *Nat. Bank of Newburgh* v. *Smith*, 66 N. Y. 271 it is *held* that where a bank holds a note overdue and the maker deposits funds sufficient to cover the note without any instruction as to the application of the funds, it is optional with the bank whether it applies the funds to the payment of the note or not.

NEW YORK COURT OF APPEALS.

NEGLIGENCE—THROWING MAILBAG FROM TRAIN — LIABILITY OF COMPANY FOR INJURY. — The plaintiff having purchased a ticket and waiting on the platform of the depot for the arrival of the train he wished to board, was struck and injured by a mail bag thrown from the car, for which injury he brings this action for damages. *Held* that he can mantain an action and that the company are liable for negligence in such case. — *Carpenter* v. *B. & A. Railroad Co.*, — (Danforth J.) — Alb. Law Journal April 4 1885.

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FEDERAL COURTS.

MORTGAGE — SATISFACTION OF — BONA FIDE PURCHASER. — Where the records show the existence of a mortgage on real estate to secure a negotiable instrument, not yet due, a purchaser of the land who makes payment of the debt to the mortgagee, without requiring the production of the mortgage, or other proper evidence of his authority to satisfy the record, is chargable with carlessness and makes the payment at his peril. The mortage is but an incident of the debt, and partakes of its negotiability, and a party purchasing the land and seeking to remove the incumbrance must take care that he makes payment to the proper party. The purchaser, having no knowledge to the contrary, may rely upon the record as he finds it, although such record may be erroneuos or false; but a record made by his own act or procurement cannot be invoked in his behalf: otherwise he mignt profit by his own fraudulent or careless act,—*Windler* v. *Bonebrake et al.*—(Foster J.)—March 13, 1885.—1, Kas. Law Journal 106.

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UNITED STATES SUPREME COURT.

FEDERAL PROCEDURE — EXAMINATION OF A PARTY BEFORE TRIAL. — The rule, established, that the rules of practice and pleading in the Federal Courts shall conform as near as may be to the practice in the State Courts of the State in which the Federal Court sits, is applicable only where there is no rule on the

same subject prescribed by act of Congress. Where under the practice of the State Court a party to a suit may be examined by his adversary, this right is denied in the United States Courts, sitting in New York. The provisions of the Revised statutes of the United States is, that "The mode of proof in the trial of actions, at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided." — In *Re Clinton B. Fisk* — (Miller J.) — Albany Law Journal, April 4 1885.

ENGLISH HIGH COURT.

UNLAWFUL ASSEMBLIES—ASSEMBLING FOR A LAWFUL PURPOSE BUT KNOWING THAT SUCH ASSEMBLING WOULD LEAD TO RIOT. — The Salvation army conducting their religious work in a town were interrupted by evil disposed persons in such a way as to cause annoyance and disturbance to peaceable citizens. Notwithstanding this interference they again assembled and marched in procession on the streets against the protest and warning of the police authority. While in the act of marching peaceably and singing their religious songs they are intercepted by the police and the leaders are arrested, to which they make no forcible resistances. The leaders of the army upon trial, were held to answer for unlawfully assembling and parading the streets, from which ruling they appeal. The question here decided is, are persons liable to the penalties imposed on unlawful assemblies for thus conducting an assembly which is in itself lawful but which they know if persisted in, will lead to riotous conduct on the part of others? *Held* that where thus assembled for a lawful purpose without using or intending to use any violence in resisting any interference, they cannot be held liable to the consequence of an illegal assembly whatever riotous or disorderly conduct arises from their assembling. — *Beatty* v. *Gillbanks* — (Field J.) - - Filed June 13, '82 — English High Court of Justice — Alb. Law Jour. Dec. 23, 1882.

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

Chicago & North Western R. R. Co. v. *Eliza Hunnerberg.*

FILED APRIL 18, 1885.

THIS was an action by appellee against appellant to recover damages for a personal injury to her. The trial resulted in a verdict and judgment against appellant for $3000 to reverse which this appeal is prosecuted.

It appears from the evidence, that the plaintiff was the owner and resided in a house situate outside, but contiguous to, defendants right of way in the village of Palatine: that defendant had a side track in the vicinity of said house, one of the tracks of which was in bad and defective condition, that while defendant's servants were backing a freight train down said side-track, July 20, '83, some of the cars left the track on account of said defect, but the engine driver notwithstanding, kept the train baking until the end car went beyond defendants right of way, through the fence in front of plaintiffs house, and with great force and violence, struck the the porch thereof and demolished it. These facts were shown without any conflicting testimony and evidence was further given showing that the plaintiff was, at the time, pregnant; that she was upstairs in the house with two young children with her; that the shock and fright were so great that, though this was on Friday, and her health had previonsly been good, by Sunday she had a miscarriage which seriously injured her. The court below on behalf of plaintiffs gave this instruction amongst others, to the jury; "The court instructs the jury, that it is the duty of the company to keep its tracks in resonable and safe repair, and if you believe from the evidence that the defendant company suffered and permitted one of tbe rails of its side-traks, at the village of Palatine, in Cook county to become and remain for a long time out of repair and in an unsafe and dangerous condition, and that by reason thereof one of the trains of the said company, became derailed and left said side-track and struck the house where the plaintiff resi-

ded and where she then was, and thereby inflicted bodily injury upon the piaintiff through fright, then your verdict should befor the plaintiff, and in making up the amount of your verdict it is proper for you to consider any physical pain or sufferings, which you may find from the evidence was undergone by the plaintiff, if any, resulting from said injury. And if you further believe from the evidence that such injury to the plaintiff, if any there be, is permanent or will extend into the future, your verdict, if such be the proof, should include all the damage which you find from the evidence the plaintiff has suffered, if any; and all the damage, if any which you believe from the evidence the plaintiff will suffer in the future, by reason of said injury.

Hon. B. C. Cook, esq. Attorney for appellant.

De Witt C. Jones, esq. Attorney for appellee.

McALLISTER J.—The counsel for appellant, defendant below, insists that, in as much as appellee, plaintiff below was not hit upon her person by, or thrown against, any thing upon the floor, and her only injury being from the fact of her pregnancy and miscarriage, caused by mere shock to her nerves and fright, there was no such proximate connection between the negligence of the defendant, in respect to a rail of the switch being in a bad and defective condition, and the injury to the plaintiff as would entitle her to recover for that injury, the damages being too remote. As we analyze this case, from the evidence, we regard it as essentially different in its controlling characteristics from what the counsel for the defendant seems to consider it to be, and different from the case of *Phillips* v. *Dickerson*, 85 Ill. 12 said to be exactly in point.

The plaintiff testified without contadiction, that she herself owned the house where she was, at the time it was struck by the end car of defendant's train, but that fact is not averred in the declaration. It appears from the plat of Palatine, in evidence, and the localty of the alleged accident, the said house was wholly outside of the defendant's right of way. That fact is not averred in the declaration; but, in as much as it is one which cannot be changed by evidence, we shall regard it as part of the case. Concisely stated, then the case is this: The plaintiff with two young children by her side, one of them her own, is in the chamber of a house (no definite description of which is given in the evidence,) which is upon land lying entirely outside the defendant's right of way. There is a door yard in front of the house with trees in it, and enclosed by a fence. While the plaintiff is thus in the chamber of her own house, and being about two months gone in pregnancy, she sees a portion of the freight train in question has left the side-track and is comming whith great forse and violence towards her house; she sees and hears the end car crash through her door yard fence, and striking trees which fail to arrest its course, it comes against the house and tears away the porch belonging to it. The lives and limbs of herself and the children there were in iminent peril, from such a frightful invasion of her premises and home, and she was overcome by a natural and reasonable fear. The shock to her nervous system was so overwhelming that, though previously healthy, she was thereby made sick, and, the second day thereafter, suffered a miscarriage, which is the injury for which she brought this suit.

The invasion of the premises in the way described was not the result of inevitable accident; there was fault — culpable negligence, on the part of the defendant's servants having the management of the train. Such invasion was, therefore, unlawful, — it was a trespass committed under circumstances wherein mischief and injury were likely to befall sombody in that house, and in such case intention and design to do that mishief were not indispensible to liability therefor. *Bullock* v. *Babcock* 3 Wend 390; *Welch* v. *Duran* 36 Conn. 182. There is a total want of evidence tending ro show inevitable accident; and there was evidence tending to show negligence, not only as to the track, but as to the manage ment of the train afte

the cars left the track. But it was not necessary for the plaintiff to introduce evidence, in the first instance that the escape of these cars from the defendant's right of way, and upon the premises where plaintiff resided, was the result of negligence.

It is a well settled rule of the common law, that "the person, who for his own purposes brings on his hands and collects and keeps there any thing likely to do mischief, if it escapes, must keep it in at his peril; and if he does not do so, is *prima facia* answerable for all damage which is the natural consequence of its escape." *Fletcher* v. *Ryland*, L. R. 1 ex. 265, 279: Affirmed in same case in L. R. 3 H. L. 330; *Gosham* v. *Gross*, 125 Mass. 232, and cases there cited. We can perceive nothing in reason or in the circumstances of this case to derrogate from the application of that doctrine in this case. Every element involved in the rule is present.

The act of invading the presmises in question was, under the circumstances, an unlawful act; and was one which was likely to prove injurious to the occupants of the dwelling where plaintiff was; and there was evidence tending to prove that it was the result of gross negligence and reclessness. Upon these facts, if established, the defendant was liable to the plaintiff for the injury she suffered in consequence, if such injury was the natural and probable consequence of the wrong committed; and this irrespective of whether those guilty of the negligence knew she was in the house or not, or of her condition as respects pregnancy.

In *Vanderburg* v. *Fruax*, 4 Denio 465, the rule in such cases was carefully formulated by Bronson J. as follows; "It may be laid down as a general rule, that when one does an illegal or mischievous act which is likely to prove injurious to others, and when he does a legal act in such a careless and improper manner, that injury to third persons may probably ensue, he is answerable for all the consequences which may directly and naturally result from his conduct; and in many cases he is answerable criminally as well as civilly. It is not necessary that he should intend to do the particular injury which follows." *Scott* v. *Shepherd* 2 W. Bl. 892; *Guille* v. *Swan* 19 Johns 381: *Brown* v. *Milwaukee & St. Paul R. R. Co.*, 54 wis. 342, S. C. 41 Am. R. 41; *Ergott* v. *Mayor*, 96 N. Y. 280, S. C. 43, Am. R. 480. The case of Brown *v.* Milwaukee Railway Co., *supra*, fully sustains the position that the party guilty of a tort may be liable for causing a miscarriage when no direct physical injury was inflicted upon the woman, if the miscarriage was a natural and probable consequence of the wrong. *Oliver* v. *La Valle* 36 wis 592 is to the same effect.

The first instruction for plaintiff was, however, so erroneous and misleading, that, with the defect of the declaration, we feel compelled to reverse the judgment. That instruction perports to comprehend all the necessary elements of a right of recovery: but in the hypothesis as to the wrong on the part of defendant, nothing is embraced but the negligence as to the rail of the side-track. It appears to us to be very doubtful, if there was such a proximate connection between that negligence and the plaintiff's injury as to warrant a recovery. The question of that connection was not submitted to the jury, or, whether the injury was the natural and probable consequence of that negligence. The case shows that between said defective rail whereat the cars left the track to run upon the ground, and the premises where plaintiff was, at the time, there was a space of one hundred and fifty feet, over all, which distance, the engine driver and those in charge of the train permitted it to go, and drove it with great force and violence into the yard and against the house in question, causing naturally and reasonbly the great fright and shock which plantiff experienced.

Now, it is not difficult to perceive, that between that unlawful invasion of the premises and the injury to plaintiff there might be sufficient proximate connection to warrant a recovery. But that element is wholly omitted from the instruction. The judg-

ment will be reversed and the cause remanded for a new trial.

JUDGMENT REVERSED.

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UNITED STATES CIRCUIT COURT, N. D. ILLINOIS.

Joseph C. Mackin and William J. Gallagher v. *The United States.*

PETITION IN ERROR.

CRIMINAL CASE — WRIT OF ERROR FROM CIRCUIT TO DISTRICT COURT—WHEN IT WILL BE GRANTED—PRACTICE.

GRESHAM J. — The prosecution in this case was commenced under section 5440 Rev. Stat. by information filed by the district attorney, containing seven counts, charging that the defendants conspired to commit the offenses described in sections 5403, 5511 and 5514. Gleason, Mackin and Gallagher were convicted upon all the counts, and the two latter were sentenced to pay a fine of $5,000 each, and to imprisonment in the penitentiary at Joliet for two years. Biehl was acquitted. Mackin and Gallagher by their petition ask the Circuit Court for a writ of error and for a stay of sentence until the rulings of the District Court shall have been reviewed.

The first count in the information charges that at the late election a large number of votes were cast at the second election precinct of the eighteenth ward of the city of Chicago, in Cook County, for a representative in Congress, and for state and county officers; that the Judges of electon canvassed the votes, and the proper clerks made two tally-list showing the number of votes received by each candidate; that on the day after the election the judges and clercks certified on each poll-book the number of vots cast for each person voted for, and thereupon, one of the poll-books with the certificate indorsed thereon, and one of the tally lists, together constituting the return from such precinct, properly enveloped and sealed, were delivered by one of the judges to the county clerk and his deputies at the clerk's office, whose duty it was to safely keep and guard the same, and that Mackin, Gallagher, Gleason and Biehl conspired to break open such package, mutilate and alter the certificate, destroy the tally-list, and substitute in its place a false and spurious paper. The separate acts charged to have been done in furtherance of the conspiracy are:

1. That Gleason and Biehl made opportunity for, and permitted the package to be broken open, and the return taken therefrom altered and falsified.

2. That Mackin and Gallagher unlawfully broke open the package, and removed therefrom such return.

3. That Gallagher unlawfully mutilated and altered such certificate by erosing the word "four" in the sentence "Henry W. Leman had four hundred and twenty votes for State Senator," and wrote in place thereof the word "two," so as to make the sentence read, "Henry W. Leman had two hundred and twenty votes for State Senator;" and erased the word "two" from the sentence, "Rudolph Brand had two hundred and seventy-four votes for State Senator," and wrote in place thereof the word "four," so as to make the sentence read, "Rudolph Brand had four hundred and seventy-four votes for State Senator."

4. That Gallagher made a false and spurious paper, and substituted the same in place of the genuine list, and

5. That Mackin and Gallagher unlawfully made way with and destroyed the genuine tally-list.

The second and third counts embrace the ballots as well as the other papers described and embraced in the first count.

The fourth count charges that the defendants conspired to interfere with Michael Ryan, the clerk of Cook county, and such two justices of the peace as he might associate with him in the discharge of his duties, in opening and canvassing the several returns of the election within Cook county, such interference to be effected by mutilating and altering the certificate on the poll-book deposited in the clerk's office before the opening and canvassing of the

returns from the second precinct, and by removing from the county clerk's office and destroing the tally-list deposited therein, and substituting for and in place thereof a false and spurious paper purporting to be such tally-list; and that in furtherance of this conpracy the defendants altered the certifieate on the poll-book, making it appear that Leman had received for State senator the number of votes cast for Brand, and that the latter had received the number of votes cast for Leman, and that the defendants removed from the clerk's office and destroyed the tally-list deposited therein, and substituted for and in place of it a false and spurious paper.

The conspiracy charged on the fifth count was to destroy the papers described in the fourth count, and in addition thereto, a large number of ballots which had been deposited in the clerk's office, and substituted in their place spurious ballots and paper.

The sixth count charges that the returns of the poll of second precinct had been deposited in the clerk's office, as stated in the previous counts, and that the defendants conspired to steal, carry away, and destroy part of such returns, to wit, the tally-list; and that to effect the object of this conspiracy, they unlawfully did steal and destroy such tally-list, and substitute for it a fabricated tally-list.

The seventh count charges that the defendants conspired to steal from the county clerk's office a large number of the ballots, and one of the poll-books deposited therein as a part of the return of the election at such second precinct, and destroy the same, and that in furtherance of this conspiracy, the defendants actually did steal, carry away from the clerk's office and destroy a large number of the ballots and the poll-book so deposited therein, and substituted in the reace thereof spurious papers purporting to be the genuine ballots and poll-book.

The first, second and third counts are based upon Sections 5515 and 5512; the fourth and fifth counts upon Section 5511; and the sixth and seventh counts upon Section 5403.

Section 5515 declares that every officer of an election at which any representative or delegate in Congress is voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, territorial, district, or municipal law or authority, who neglects or refuses to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory thereof, or who violates any duty so imposed, or knowingly does any act thereby unauthorized with intention to affect any such election, or the result thereof, or who fraudulently makes any false certificate of the result of such election in regard to any snch representive or delegate, or who withhol conceals or destroys any certificate or record so required by law, respecting the election of any such representative or delegate, or who neglects or refuses to make and return such certificate, as required by law, shall be punished, etc.

Section 5512 declares that, if at any registration of voters for an election for representative, or delegat in Congress, any person by force, threats, menace, intimidation, bribery, reward, or offer or promise thereof, interferes with any officer of registration in the discharge of his duties, or by any such means, or other unlawful means, induces any officer of registration to violate or refuse to comply with his duties, or if any such officer or other person who has any duty to perform in relation to such registration or election in ascertaining, announcing or declaring the result thereof, or in giving or making any certificate, document, or evidence in relation thereto, knowingly neglects or refuse to perform any duty required by law, or violates any duty imposed by law, or does any act unauthorized by law relating to or affecting such registration election, or the result thereof or any certificate, document, or evidence in relation thereto, every such person shall be punishable, etc.

Section 5511 declares. that, if at any election for representative, or delegate in Congress, any person, by force, threats, intimidation, bribery, reward, or offer thereof, unlawfull prevents any qualified voter of any State or Territory from freely exercising the right of suffrage, or in any manner interferes with any officer of such election in the discharge of his duty, or by any such means, or other unlawful means, induces any officer of election, or officer whose duty it is to ascertain and announce, or declare the result of any such election, or give or make any certificate, document or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same, he shall be punished, etc.

Section 5403 declars, that every person who willfully destroys, or attempts to destroy or with intent to steal or destroy takes and carries away any record, paper or proceeding of a court of justice, filed or deposited with any clerk, or officer of said court, or any paper, or document, or record, filed or deposited with any such public officer or with any judical or public officer, shall without reference to the value of the record so taken away, be punished, etc.

Section 59, Chap. 46, of the Rev. Stat. of Ills., provides that the ballots counted by the judges of election, after being read, shall be strung upon a thread in the order in which they have read, and then carfully enveloped and sealed up by the judges, who shall direct the same to the officer to whom by law are required to return the poll-book, and shall be delivered together the tally books to such officer, who shall carefully preserve said ballots for six months, and at the expiration of that time shall destroy them without the package being previously opened, provided, that if any contest of election shall be pending at such time in which such ballots may be required as evidence, the same shall not be destroyed until such contest is finally determined.

Section 51 provides, that when the votes shall have beeh examine and counted, the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person receives such votes, and the number he did receive, the number being expressed in words at full length; such entry to be made as nearly as circumstances will permit in a prescribed form.

Section 62 provides that such certificate together with one of the lists of voters, and one of the tally papers, having been carefully enveloped and sealed up, shall be put into the hands of one of the judges or board of election, who shall, within four days thereafter, deliver the same to the county clerk or his deputy, at the office of the county clerk, and when received, such clerk or deputy, shall proceed to open, canvass and publish the returns from each precinct or election district as provided by law.

Section 71 provides that, within seven days after the close of the election, the county clerks of the respective counties, with the assistance of two justice of the peace of the county, shall open the returns and make abstracts of the votes in the form prescribed; the votes for governor and other State officer on one sheet, and the votes for represantives to Congress on another sheet.

Motions were made at the proper time to quash the information, in arrest of judgement, and for a new trial, all of which were overruled by the district judge. The fifth amendment to the Constitution of the United States declars that no persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. The defendants were arrested on an information by the district attorney, and not on an indictment found by a grand jury, for which reason it is claimed the trial, conviction and sentence were illegal.

It is further urged on behalf of the defendants, that the only ground upon which the jurisdiction of the District Court can be maintained is, that the acts charged in the information were done to influence the election of a representive in Congress, and that the information contains no such averment.

The sixth and seventh counts charge that the defendants conspired to violate section 5403 by stealing from the county clerk's office, where they had been deposited as requried hy law, the tally sheet, poll-book and ballots, and that they actually did steal, carry away and destroy such papers.

Congress passed an act in 1853 (10 Statutete at Large 170) entitled, "An act for the prevention of frauds upon the United States Treasury," the forth and fifth sections of which were carried forward into the Revised Statutes, as section 5403. It is claimed that the clerk's office is not a public office within the meaning of the section; that it contemplates public office of the United States only, and that, therefore, the District Court had no jurisdiction of the offenses charged in the sixth and seventh counts. Other errors are assigned which need not now be noticed.

The Circuit Courts under section 1 of the act of 1879, has jurlsdiction of writs of error in all criminal cases tried before the District Court, where the sentence is imprisonment or a fine exceeding $300.

Section 2 provides that the defendant may petition for a writ of error on the judgment of the District Court in the cases named in section 1, which petition shall be presented to the circuit judge or circuit justice, who, on consideration of the importance and difficulty of the questions presented in the record, may allow a writ of error, and may order that such writ shall operate as a stay of procedings under the sentence; but the allowance of the writ shall not so operate without such order. The statute does not say that the circuit judge or circuit justice *shall* allow the writ of error and make it operate as a stay of proceedings.

The language is that the circuit judge or circuit justice, "on consideration of the importance and difficulty of the questions presented in the record" may allow a writ of error. It is plain that under this statute a writ of error is not a writ of right. It is in the discretion of the judge to whom the application is made to allow the writ, or deny it, and if he allows it, it is also in his discretion whether he will stay the sentence. Of course, this discretion is a legal one, and in its exercise the defendant should have the benefit of any doubts arising upon the questions of law presented by the record. If upon the errors complained of there be any doubt, or room for fair debate, the defendants should not be denied an opportunity to take the deliberate judgmeut of the Circuit Court upon the rulings of the District Court, if those rulings have affected the judgment and sentence of that court, and in such a case, the proceedings under the sentence should be stayed. A different construction of the statute would defeate the manifest intention of Congress (*U. S.* v. *Whittier*, 11 Bis. 356.)

I can not say the record presents no question of sufficient difficulty and importance to entitle the defendants to a writ of error, and an order staying proceedings under the sentence.

The sole question now decided, is that the defendants ar entitled, under the statute of 1879, to have the rulings of the District Court reviewed by this court, and a stay of proceedings until that is done. It is not to be inferred from the action now taken that the rulings of the district judge will be reversed and a new trial ordered.

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TEXAS COURT OF APPEALS.

W. U. Telegraph v. *McKinney*.

FILED MARCH 14, 1885.

LIABILITY OF COMPANY — MEASURE OF DAMAGES — CIPHER DISPATCHES — NOTICE OF VALUE — STIPULATION IN COMPANY'S BLANKS.

WILSON, J. — Appellee who was engaged in the business of peddling, on August 31, 1883, delivered to appellant's agent at Houston, a telegraph message to be transmitted aud delivered to P. Callaghan, at Kansas City, Mo., which was in the following words: "Twenty lumps, five looms, five buffs, five bucks." This message was understood by appellee and Callaghan to mean that the latter, who was a merchant,

should forward to the appellee, at Houston certain linen goods, which the appellee was engaged in peddling. The message was never delivered to Callaghan. Appellee waited in Houston several days for the goods, and finally ordered them by telegram a second time and received them. By the nondelivery of said message he was delayed in getting the goods ten or eleven days, during which time he remained in Houston. He brougth this suit to recover damages for the failure on the part of said appellant to deliver said message claiming damages generally in the sume of $125. In the Justice's Court, in which the suit was instituted, he recovered judgment for $96.25 and costs. In the County Court. to which the cause was appealed by the company, he recovered judgment for $100 and all costs.

The only evindence as to damage is furnished in the testimony of appellee himself. He testified that he remained at Houston waiting for his goods ten or eleven days, at an expense of $5 per day. And generally that he was damaged in the sum of $125, but did not specify in what such damage consisted, further than his daily expenses.

It is plain that the message does not disclose its meaning. It is, in effect, a cipher message, and did not upon its face notify the company that it was of pecuniary value or importance. Such being the character of the message, the rule laid down by perhaps the weight of authority as to the measure of damage for failure to send or deliver such message, seems to be, briefly stated, as follows: If the message itself does not show that it is of pecuniary value or importance, from any other source, at the time it undertakes to transmit and deliver it, the sender can only recover nominal damages or the amount paid for sending it. (3 Sutherland on Dam., 298, 299; 6 Wait's Ac. and Def., 19; *Shields* v. *U. U. Tel. Co.*, Allen's Tel. Coses, 5; Sedgw. on Dam., p. 413; *Baldwin* v. *W. U. Tel. Co.*, 54 Barb. (N. Y.) 505; S. C. Allen's Tel. Cases, 613; *Candee* v. *W. U. Tel. Co.*, 34 Wis., 471.) This rule has been expresly recognized and adopted by the Supreme Court of this State in *Daniel* v. *Western Union Telegraph Co.*, 61 Tex., 452, and in that case the doctrine of Baldwin *v.* United States Telegraph Co. *supra*, is quoted and approved, and it is said that the limitation of the damages, as established by those cases, must be held to apply with conclusive force to enigmatic cipher telegrams, the meaning of which is a sealed mystery to the operator" It is therefore the law of this State, as established by our Supreme Court, that in the case of cipher telegrams the sender can only recover, for a failure to send or deliver, nominal damages, unless he alleges and proves that the company, at the time of receiving such telegram for transmission, had knowledge that it was of value and importance. And further, that although the company had knowledge of its value and importance, the damages will be limited to such as might fairly, reasonably, naturally and directly arise from the breach of the contract according to the usual course of the things, or such as may reasonably be supposed to have been in contemplation of both parties at the time they made the contract, as to the probable result of the breach of it. In other words, the damages must he the natural and necessary consequences of the breach of the contract, in the minds of the parties, interpreting the contract, in the light of the circumstances under which it was made. Damages arising specially, or consequentially can not be allowed unless they are shown to have been reasonably within the contemplation of both parties when making the contract; that is, unless both parties at that time were informed of the facts which would render such damages proable in the event of a breach of the contract. This rule, limiting damages in actions of breach of contract, unaccompanied by fraud, oppression, or gross negligence, it is undoubtedly now the settled law of this State: *Jones* v. *George*, 61 Tex. 345, and numerous authorities there cited; *Pac. Ex. Co.* v. *Darnell*, 5 Tex. Law Review, p. 73; W. & W.'s Con. Rep., Secs. 193, 1002, 1034, 1125; 2 Con. Rep., Sec. 283.

This court, however, in the case of *West. Union Telegraph Company* v. *Weiting*, *W. & W's Con. Rep.* Sec. 801, and *Western Union Telegraph Company* v. *Bertram & Mueller*, *Idem*, Sec. 1152, announced a more liberal rule upon the subject of damages as being applicable to the breach of contracts by telegraph companies, and these cases are, in this particular, in conflict with the case of *Daniel* v. *Western Union Telegraph Company*, *supra*, which expressly declares that the general rule limiting damages in the breach of contracts is not only applicable to a breach of contract by a telegraph company, but applies with conclusive force when the message is in cihper. It is still the opinion of this court that the rule, as stated in the two cases named, is not only supported by good authority, but that it is more in consonance with reason and justice than the one declared in *Hadley* v. *Baxendale*, *supra*.

But while we have not changed our opinion as to the correctness of those decisions, we conclude that for the sake of avoiding conflict in the civil decisions of the courts of last resort in this State, and to preserve, as far as practicable, a uniform rule upon this subject, the cases above referred to, decided by this court, in so far as they are in conflict with the Daniel case, *supra*, should be and are overruled.

We will here remark that in our opinion the breach of the contract in this case, and in the cases above overruled, was accompanied with, or rather was the result of gross negligence on the part of the company, and such being the case, the rule limiting the damages to direct and proximate actual damages, is not applicable. But such was also the case of Daniel, *supra*. There the negligence was gross, and yet the restrictive rule was applied, and in holding as we do, upon this point in the case, we are but holding what we understand to be the law laid down in the Daniel case.

In charging the jury, the learned judge followed substantially the rules announced by our Supreme Court upon the measure and limitation of damages. No complaint is made against the charge, but it is insisted that the verdict and judgment are contrary to and in disregard of said charge.

It was proved that appellant's clerk was notified by appellee at the time of delivering the enigmatical message for transmission that it was an order for goods to be shipped to him at Houston from Kansas City. There was a conflict of evidence upon this point, but we will take it for granted that the jury determined the question in favor of appellee. Considering it, therefore, as a fact that appellant had notice when it received the message for transmission, that it contained an order for goods, this was sufficient notice that it was of value and importance. It was not necessary that the company should have been apprised of the details of the transaction. It was its duty to inquire for particulars if it desired them. All that the law required to fix the liability of the company for actual damages resulting directly and proximately from the non-delivery of the message, was notice to the company, in a general way of the business of which the message related, and the purpose to which it was intended to contribute: 3 Sutherland on Dam., 310, 311; *Rittenhouse* v. *Tel. Co.*, 44 N. Y. 263; *Candee* v. *Tel. Co.*, 34 Wis. 271.

But while this notice was sufficient to fix the liability of the company for the actual, direct and proximate damages, which might reasonably be supposed to have been in the minds of both parties at the time of making the contract, it would not extend such liability to any special consequential damages resulting to appellee by reason of circumstances peculiar to his case, and about which the company were not informed at the time of the contract, and could not, therefore, have contemplated. Thus, the company was not informed that appellee was a peddler and wanted the goods he ordered for the purpose of carrying on his business as a peddler, and that he would have to remain in Houston idle, and pay his expenses until he received said goods. Ordinarily, such

damages would not result from the breach of such a contract, and can not, therefore, be said to be direct, natural and proximate; but they are special and consequential, and recoverable only where the party breaching the contract had notice when he made the contract of the facts which would render such damages reasonably probable in the event of a breach.

We are of the opinion, therefore, that appellee was not entitled under the facts of this case, to recover his expenses while remaining in Houston. He was entitled to recover the amount of money he necessarily expended in obtaining his goods, and the difference between the price he could have obtained the goods for in Kansas City, at the time his message should have been delivered, and the price he afterward had to pay for them, if there was any such difference, and interest on such damages. These would be the only direct and proximate damages recoverable under the facts of this case, and our understanding of the law. No such damages were proved. Appelle testified that he had been damaged in the sum of $125, but failed to state the particulars of such damage. Such testimony will not supporth a judgment for damages: W. & W.'s Con. Rep., Sec. 861: 2 Con. Rep., Sec. 162. We think the verdict and judgment are unsupported by the evidence and contrary to the charge of the court.

In the contract under which the message was received for transmission, it was stipulated that the company should not be liable for damages, unless the claim therefor, in writting, was presented to it within sixty days after sending the message. This stipulation was valid, and binding upon appellee: *W. U. Tel. Co.* v. *Pells & Ray*, 2 Texas Law Review, 276; *Wolf* v. *Tel. Co.*, 62 Penn. St. 83; *Young* v. *Tel. Co.*, 65 N. Y. 163; *Hermann* v. *Tel. Co.*, 57 Wis. 562. It was not complied with by appellee, unless the institutfon of this suit within the sixty days was a compliance therewith. It was held by the trial judge, that the suit was equivalent to a written claim for damages presented to the company. While this may be true, we do not think it was a compliance with the stipulation as to *this* action. This stipulation was a condition precedent to appellee's right to recover any damages. Until he had performed it, he had no cause of action: W. & W.'s Con. Rep., Secs. 374–1257; *G. H. & S. A. R. R.* v. *Harmon* 2 Texas Law Review, 216.

At the time he instituted this suit he had not performed it, and therefore no cause of action had accured to him, and this suit is not maintainable. We think the institution of this suit, it being based upon a claim in writting, for damages which had been presented to the company, is a sufficient compliance with said stipulation, to fix the liability of the company for damages in another suit, or in this suit, upon proper amendment and notice thereof to appellant, but that the court erred in holding that snch claim, made *after* the institution of the suit was sufficient for the purpose of *this* suit. This was holding that the suit could *precede* the claim for damages when the contract required that the claim for damages must precede the appellees right to sue.

Because of the errors we have mentioned, the judgment is reversed and the case is remanded.

Reversed and remanded.

STEWART & BREAKER, for appellant.

No apperance for appelle.

———o———

THE question of equal rights of colored under the Civil Rights law has again been under judical consideration. In the case of *Longwood & wife* v. *Memphis & Charleston R. R. Co.*, decided last month in the U. S. Circuit Court in Tennesee, judge Hammond charged the jury substantilly as follows: This was a suit under the Civil Rights law. Longwood and wife are colored people living at Huntsville, Ala. She bought a first class ticket to Courtland. When she went on the platform of the ladies' car a brakeman, having let several white ladies into the car, closed the door on Mrs. Longwood, and told her she must apply to the conductor for permission

to ride in that car; she could take a seat in the front car. According to her testimony and that of her witnesses the conductor told her she must ride in the front car. She told him she had always been allowed to ride in the ladies' car, and thought she should do so again, as she was rich and did not want to ride in the front car, where there was swearing and smoking and whisky drinking. The conductor insisted she must ride in the front car, but told her he would see there was no swearing or smoking.

According to the testimony of the conductor and his witnesses, he told her he was busy then, but he had always let her ride in that car, and if she would take a seat in the front car, when he got through he would come and let her back in the ladies' car. She ordered her trunk off the baggage car and refused to take that train, and under instructions from her husband kept that ticket, bought another and went home on the next train in the ladies' car. Both Mrs. L. and the conductor testified she had often traveled with him and always rode in the ladies' car. The conductor testified that the car in the rear was reserved for ladies' and such passengers as were admitted to it. The front car was a general car, in which smoking was permitted, but on this particular occasion the front car was newer and brighter, in all respects than the rear one in appearance and comfort; that colored people generally rode in the front car, unless objection was made by them, in which case proper persons were allowed to ride in the ladies' car which the plaintiff was always permitted to do.

Judge Hammond charged the jury that common carriers are requried by law not to make an unjust discriminaton, and must treat all passengers paying the same price alike, but that equal accommodations do not mean identical accommodations; that races and nationalities might be, under some circumstances to be determined on the facts of of each case. reasonably separated, but that in all cases the carrier must furnish substantially the same accommodations to both, to be determined by having the same comforts and privileges and pleasures that are furnished to either class. That colored people and white people migth be so separated if the carriers have a car to proceed according to this rule. That if the had a car giving white ladies' special privileges of seclusion and other comforts, substantially the same must be furnished colored ladies. He told them all travelers had to submit to some discomforts and inconveniences and must not be too exacting, but that they are entitled to polite treatment, free from any indignity of any kind.

He told the jury that the brakeman having referred the right of plaintiff to ride in that car to the conductor, who was the proper official to decide it, and plaintiff having gone to the conductor, the question in this case must be determined by what occurred between her and the conductor; and if the jury believed the conductor ratified the act of the brakeman by telling her that she must ride in the front car and would not be permitted to ride in the ladies' car, the company was undoubtedly liable for damages, unless the jury believed from the proof that the front car was, under the rule already announced, equal to the ladies' car. Bnt if the jury believed that the conductor told her that at his convenience he would admit her to the ladies' car and there was no unreasonable discomfort or delayin in so doing, she could not recover.—Chi. Leg. News.

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SOME people are too trusting for this world. At a recent trial the prisoner entered a plea of "Not guilty," when one of the jury put on his hat and started for the door. The Judge called him back, and informed him that he could not leave until the case was tried. "Tried!" cried the juror. "Why he acknowledges that he is not guilty!"

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"GUILTY or not guilty?" sharply said an Assize Judge the other day to an inattentive female prisoner in the dock. "Just as your Honor please. It's not for the likes o' me to dictate to your Honor's worship," was the reply.

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The Chicago Law Journal.

CHICAGO, JUNE, 1885.

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NEW PUBLICATIONS.

THE RAILROADS AND THE COURTS is the title of a book wrirten by Hiram T. Gilbert Esq., County Judge of La Salle County, Illinois, and recently published. It is chiefly an analysis of the litigation of the last ten years in this state, in which some one of the principal railroad companies was a party, and a comparison of the results with other classes of litigation between individuals, or between the state and individuals.

In the preface Judge Gilbert makes the statement, that out of a total of sixty three judgments rendered against four of the leading railroads, in the Circuit Courts, in which the question of negligence was involved, ten were affirmed and fifty-three reversed by the Supreme Court. Of the ten affirmed, only five were affirmed on the first, and the other five upon the second or third trial. On the other hand, out of a total of fifty-three judgments of conviction in criminal cases reviewed since 1881, thirty-two were affirmed and twenty-one reversed. These statement are confirmed by a citation of the cases.

From these facts the conclusion is drawn that there is something radically wrong in a system of Jurisprudence which, seems to favor the stronger against the weaker party, especially when the former is a powerful and wealthy corporation. Whilst the evils complained of are apparent to all who have observed the results of such litigation, and call loudly for reform, yet there are facts, upon which the author has touched very lightly, which tend in some degree to lessen the apparent wrongs. These facts are, that in trials by Jury, where the defendant is a railroad company or any large corporation, the general prejudice against such corporations is likely to taint the verdict with injustice, which calls for modificaton by the higher court; whilst in criminal cases the letter of the law, as well as a common sentiment of humanity, gives the defendant the benefit of any doubt. Hence where convicton is had it is in most cases eminently just.

The first chapter consists of an analysis of the cases confirming the general results stated. The second chapter treats of the rule of comparative negligence established by the Supreme Court. The third discuses the question as to the burden of proof and the rules of practice concerning the same. The fourth treats of when negligence should be considered a question of fact or a question of law. In the fifth chapter the subject of damages is elaborately discussed, with a citation and analysis of numerous cases. Sixth of trial by Jury. Seventh of instructing the Jury. Eighth, of the appellate Courts.—What should be their sphere in our system of Jurisprudence.

In the ninth chapter the author discusses, with a freedom and vigor which is refreshing, the subject of *bribery by railway passes.* Whilst he attributes the wrongs complained of to radical defects, in our system of Jurisprudence, and not to any wrong motive on the part of the members of the Supreme Court, he condemns in unmeasured terms, the practice of railroad companies in issuing passes to men in any official position whatever. In the tenth chapter, he suggests some remedies for the wrongs refered to which are worthy of consideration.

Upon the whole, the work is a vigorous and searching criticism of our system of jurisprudence, and of some of the evil practices which find encouragement from many in high official position, and, if we do not misjudge as to its fruits, it will awaken a wide spread interest in the subjects discussed and perhaps vigorous criticism.

For Sale by all Law Booksellers.

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AMERICAN LAW REGISTER.

THE AMERICAN LAW REGISTER for May contains the case of *Joseph* v. *Lyons*, English Court of Appeals, in which it is *held* that a registered bill of sale of personal property which includes stock in trade to be afterwards acquired is, as to such stock, only a contract to assign and the vendee takes only an equitable title.—Also the case of *Boyd* v. *Conklin*, Supreme Court of Michigan in which it is *held*, that a land owner has no right to put up such barriers as will cause surface water to flood his neighbor's land.—Also the case of *Hart* v. *Western Union Telegraph Co.*, Supreme Court of California, in which it is *held*, that the telegraph company is liable for any loss which follows naturally, and in the usual course of things, from its failure to transmit a message promptly and correctly, although the message is in cipher, and further that the usual printed stipulation on the company's blanks exempting it from liability, are void for want of consideration. Such company is exempt from liability for errors arising from causes beyond its control, only.—Also the case of *Clement* v. *W. U. Tel. Co.*, Supreme Court of Massachusetts, in which it is *held* that the stipulation on a telegraph blank that the company will not be liable for mistakes or delays in sending a message, unless said message be repeated, beyound the amount received for sending the same, is valid and binding, and the sender cannot recover beyond the amount so paid although the error or delay was occasioned by the negligence of the Company's servants.—Also the case of *Mealey* v. *Metropolitan Life Ins. Company*. U. S. Circuit Court of Rhode Island, where it is *held* that where the pleading does not show that an instrument, of which proffert is made, is under seal, oyer is not demandable, but it is the practice of the court to make an order for its production. Where a state statute regulates the practice in making such application, that practice will be followed in the Federal courts.

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FEDERAL COURTS.

RAILROAD TICKET—HOLDER BOUND TO COMPLY WITH ITS CONDITIONS. — Plaintiff purchased a round trip ticket, *limited*, and on the face thereof was the express condition that said ticket was good for transportation as indicated, provided, the purchaser identified himself to the "Authorized Agent" of the railroad at his destination, and that said ticket, should be "officially signed, and dated in ink, and duly stamped by said

agent." The purchaser presented himself at the railroad office at the proper time, for the purpose of identifying himself and having his ticket signed and stamped as required, but the agent was absent and not returning before the departure of the train, which plaintiff wished to take, he boarded the train. Upon presentation of his ticket the conductor refused to accept the same and demanded cash fare. The plaintiff refused to pay and the conductor removed him from the train. Thereupon this action is brought for damages for being wrongfully ejected from the train. *Held* that such removal gave the holder of said ticket no right of action. *Mosher* v. *St. L. I. M. & T. R. R. Co.*—(Brewer J.)—March 20.—Fed. Rep. April 28, 1885.

NATIONAL BANKS—PLEDGE TO SECURE DEPOSITOR—INSOLVENCY.—Where a depositor in a National bank is apprehensive that the bank is about to fail and after consulation with the officers of the bank, receives of the bank certain securities to be held as a pledge or as collateral for his deposit, it is *held* that if the officers made the pledge to keep the securities thus pledged out of the assets of the bank, well knowing at the time that the bank was about to fail, such pledge would be void: but if they made it to prevent failure and used the funds to pay other depositors the deposit it would be good and valid. — *Roberts* v. *Hill* — (Wheeler J.) — March 27, 1885.—Fed. Rep. 28 April, 1885.

INSURANCE—WAIVER OF CONDITIONS IN THE POLICY—PREMIUM PAID TO A BROKER—A policy of insurance issued to plaintiff on its property provided, in express terms, that the company should not be liable, "until the cash premium be actually paid to the company or an agent of the company," and that any broker who had procured the policy should be "deemed the agent of the assured and not of the company," and that no person should be considered the agent of the company, unless heheld a commission from the company, and that there should be no waiver of any condition or term in the policy, unless by express authority in writing. Plaintiff placed their insurance in hands of brokers in New York City. The New York brokers obtained the policy in question through another broker in Jersey City. The policy had been delivered to the New York brokers, and they had paid the premium to the broker in Jersey City, and before the money was remitted to the company the property was destroyed by fire. The premium was afterwards sent to the company but was refused. *Held* that B. & Co. of Jersey City were not the agents of the company to receive payment of this premium and that therefore the plaintiff could not recover.—*Peoria Sugar Refinery* v. *Susg. M. F. Ins. Co.*—(Butler J.)— Ins. Law Journal May, 1885.

RIGHT OF THE STATE TO REGULATE INSURANCE COMPANIES — SPECIAL CHARTER GRANTED PRIOR TO LEGISLATIVE ACT—IMPAIRMENT OF CONTRACT. — The legislature of Illinois in 1869 passed an act requiring the auditor of State to compel life insurance companies to keep on hand a certain reserve, and if they fell below the requirements to compel them to suspend new business.

The plaintiff company was organized in 1867 under a special charter, without any such limitation as the statute of 1869 imposed. Continuing thus to do business under their charter the company denies that the auditor has any right, under the statute, to insist upon their keeping a standard reserve as required by the statute. The Auditor, plaintiff below, after due examination into the affairs of the company, commenced this action to enjoin them from doing further business until they complied with the condition of the statute. This action was prosecuted to judgement and a perpetual injunction was issued restraining the company. From this judgement the company appeals. *Held* that the state had a reserved right to pass such subsequent laws as might be needed to prevent the privileges granted in

the charter from being abused, and that the enactment of such law was not an impairment of the company's contract within the meaning of the constitution of the United States.—*Chicago Life Ins. Co.* v. *Needles.*—(Harland J.)—Ins. Law Journal, May, 1885.

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SUPREME COURT OF ERROR. CONNECTICUT.

DANGEROUS CONDITION OF SIDEWALK—CITY LIABLE FOR INJURY CAUSED THEREBY.—One of the principal thoroughfares in the City of Waterbury, became covered with ice and was permitted to remain in that condition for three or four weeks, the sidewalks being covered with solid ice, very smooth. The plaintiff not being aware of the dangerous condition of the sidewalk, started to walk upon it when he fell and received a severe fracture of the leg. This action was brought to recover damages for the injury, and a verdict and judgment was had for plaintiff in the sum of $1300. From this judgment defendant appeals. *Held* there was no error, Judgment affirmed. — *Cloughessy* v. *City of Waterbury.* — (Loomis J.) — Alb. Law Journal, April 11, 1885.—51 Conn.

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SUPREME COURT OF ILLIONIS.

HEAD-NOTES TO OPINIONS FILED AT SPRINGFIEL, AND PREPARED BY HON. NORMAN L. FREEMAN, OFFICIAL REPORTER, TO APPEAR IN HIS REPORTS.

32—29 — Henry H. Hoagland et al. v. *John W. Crum.*

(Opinion by SCOTT, J., reversing and remanding.) Filed at Springfield, March 30, '85.

1. PLEADING—*Plea in action for use and occupation.*—To an action to recover for the use and occupation of land, the defendant pleaded that the sole cause of action was the rent of the land which had been leased by the defendant from the widow of the deceased owner, for one year, from March 1, 1881, to March 1, 1882, and not from the plaintiffs (the heirs of the deceased owner) or either of them; that such land was held by the widow, as and for her life estate, or dower interest in the lands of her late husband; that the rents for the premises did not fall due until the expiration of the lease; that on Nov. 1, 1881, and after such leasing and before the rent fell due the widow departed this life, and that plaintiffs claimed to recover the rents of and from the defendant, as heirs at law of the deceased husband, and not otherwise: *Held*, that the plea was bad, in failing to allege that the defendant quit the premises on the termination of the lease by the death of the lessor.

2. LANDLORD AND TENANT—*Lease from life tenant good during life of lessor.*—The heirs of a deceased owner of land can not recover for the use and occupation of the same while the tenant occupies the premises under a lease from the owner of the life estate therein; but if the tenant continues to occupy the premises after the death of his lessor, he will be liable to the heirs up to the time he surrenders possession to them.

3. SAME—*Tenant under one having a life estate absolved from paying rent on death of lessor before end of the term.*—At common law, where a tenant for life gives a lease for a term of years on a yearly rent, and dies in the course of the year, before the day for the payment of the rent, the rent can not be apportioned and the tenant may quit the premise on such death, without liability to pay any rent to any one since the last day appointed for payment. This rule of the common law remains unchanged in this State.

4. But if the tenant continues occupy the premises after the determination of his lease by the death of his lessor and the owner of the reversion aquiesces in such holding, there is no rule of law to prevent the owner from recovering of the tenant the resonable value for the use and occupation of the premises, from the time of the determination of the lease by the death of the lessor.

5. *Release of errors.*—The administratrix of a dowress can not release any rights the heirs of the deceased husband may have against an occupying tenant, holding over

after the termination of his lease by death of the dowress.

Appeal from the Appellate Court for the Third District; heard in that court on appeal from the Circuit Court of Menard county; the Hon CYRUS EPLER, Judge, presiding. Messrs. BLANE & MCNEELY, for the appellants.

The rents for the year ending on March first, 1882, were certainly due to *somebody*. These rents, falling due after the death of the lessor, could not go to her personal representatives, nor could such rents go to the personal repsentatives of Martin Hoagland, late owner of the fee.

Rent falling due after the death of the lessor is a chattel real and descends with the land to the heirs, and not to the executor or administrator: *Green* v. *Massie*, 13 Ill. p. 363; *Grosby* v. *Loop*, 13 Ill. p. 626; *Foltz* v, *Sprouse*, 17 Ill. p. 487; *Dixon* v. *Nicholls* 39 Ill. p. 372.

Accruing rents for the use and occupation of land, and which do not become due till after death of the lessor, is a chattel real which descends to the owner of the reversion. Messrs. MORRISON & WHITLOCK, for the appellee.

Then if any rent be recoverable for the time from March 1st, to November, 1881, the right would be in Fannie M. Nance, administratrix, with the will annexed, and not in the heirs of Martin Hoagland, deceased, the plaintiffs in error in this case. The right being in her, as such administratrix with the will annexed, her release of the errors as set forth in the plea filed is a good reply to the assignment of errors: *Hinrichsen* v. *Van Winkle*, 21 Ill. P. 274.

But we say that no rent was due to any one; none can be recovered for the year 1881. The rent began March 1, 1881, and the lease was for one year; the life estate of the lessor fell in November of that year. Where no time is fixed for the payment of rent, the rent is due at the end of the year: *Perry* v. *Aldrich*, 13 N. H. R. 343; Same Case, 38 American Decisions, 494.

The contract was broken by the death of Louisa A. Hoagland, because her title expired with her life, and this being so, the right of Crum to occupy ceased, and neither the heirs of Martin Hoagland, deceased, nor the personal representative of the lessor had any right of recovery, *Brudell* v. *Roberts*, 2 Wils. 143; Hammond on Parties, 157; William Clune's Case, 10 Coke, 127; *Paget* v. *Gee*, Ambl. 198; *Jenner* v. *Morgan*, 1 P. Wms. 392; *Edwards* v. *Countess of Warwick*, 2 Id. 176; *Hay* v. *Palmer*, 3 Id. 502.

If one lease lands for a term of years, rendering rent annually, and the tenant be evicted between rent days, the lessor shall have no rent for that year: *Countess of Pymouth* v. *Throckmorton*, 1 Salk. 65.

Rent will not be apportioned as to time, where the lease is terminated by the expiration of the title of the lessor; Taylor, Land. and Ten., Sect. 387; *Perry* v. *Aldrich*, *supra*; *Wood* v. *Partidge*, 11 Mass. 488; *Fishburg Man. Co.* v. *Melvin*, 15 Mass. 270.

This is because the contract is an entire thing. The contract was first broken by the lessor by the failure of the title, and hence the right to occupy ceased before the end of the year.

Where the landlord terminates the lease during the year, although it be done under a provision in the lease giving him that right, he can not recover rent for any part of the year: *Zule* v. *Zule*, 24 Wend. 76; Same Case, 35 Amer. Deci, 600; *Nellis* v. *Lathrop*, 34 Amer. Deci. 284; Wood on Landlord and Tenant, Sect. 476; 1 Williams on Executors, side p. 703, *et sequi* and cases sited.

Mr. T. W. MCNEELY and Mr. S. H. BLANE, in reply.

Contended that the rule of the common law on this subject is not adopted, being inapplicable to the habits and conditions of our society, and as not being in harmony with the genius and objects of our institutions: *Boyer* v. *Sweet*, 3 Scam. 130.

The statute of this State was made for

such a case as this, and gives a right of action: R. S. 1883, Ch. 80.

44—40.—*Dow Smith* v. *J. G. Harris et al.*

(Opinion PER CURIAM, dismissing.)

FILED AT SPRINGFIELD, JANUARY 31, 1885.

1. WRIT OF ERROR—*To Appellate Court when judgment is under $1000.*—In an action to recover damages growing out of alleged negligence, a judgment of the Appellate Court affirming a judgment of the trial court in favor of the defendant, is final, and unless the judges of the Appellate Court make a certificate that the cause involves some question of law, which, on account of principal and collateral interests, should be passed upon by this court to review the judgment of the Appellate Court.

Writ of error to the Appellate Court, for the Third District; heard in that court on writ of error to the Circut Court of Coles county; the Hon. C. B. SMITH, Judge, presiding.

Messrs. CRAIG & CRAIG, for the plaintiff in error.

Messrs. STEVENS, LEE & HORTON, and Messrs. WILEY & NEAL, for the defendant in error, Beck.

11.—*Emma Stevens, et al.* v. *John Wait et al.*

(Opinion by CRAIG, J., reversing and remanding.)

FILED AT SPRINGFIELD, SEPTEMBER, 27, '84.

Rehearing denied at Jan. T., 1885.

1. DEED—*Description, when sufficient and parol evidence.*—The law is well settled that any description of land in a deed of conveyance, by which the identity of the premises intended to be conveyed can be established, is sufficient; and that for purpose of sustaining a grant, extrinsic evidence, may be used to idenify and establish the objects and calls in the deed, though it is not admissible to enlarge or vary the terms of a deed.

2. SAME—*More definite description prevails over a general one.*—Where land in a deed is described as so many acres of the west side of a quarter section, and then the place of beginning is given with the corners or courses and distances, the latter part will control as showing the premises intended to be conveyed.

3. A deed described the land as being "thirty-four and sixty-nine one hundredths acres of the south side of the southeast quarter of section fourteen, in township twelve north, of range nine east, beginning at the intermediate corner on the east boundary line of the said section, running thence south 83 deg. 40 min. west, seventy-nine poles, to a stake on the road; thence north 60 deg. 30 min. west, sixty-nine and one quarter poles to a stake; thence north 84 degrees east seventy-nine and 4-10 poles to a stake in the section line; thence south 6 deg. 30 min. east sixty-eight and three quarter poles, to the place of beginning:" *Held*, that the description of the land was sufficiently certain. The commencement is the government corner on the east line of the section between the northeast and southeast quarters of section 14, and the southeast and north lines of the tract are plain, and the words "60° 30' west," in the description of the west line being senseless, must be rejected as surplusage.

4. LIMITATION—*Possession must be adverse.*—Possession of land, however long continued, unless adverse, will not defeat a recovery by the owner; and so the possession of land by one tenant in common, not being adverse, can not be used as a bar to an action by his tenants.

Appeal from the Circuit Court of Coles county; the Hon. J. W. WILKIN, Judge, presiding.

Mr. John Favorite and *Mr. S. M. Leitch*, for the appellants.

Messrs. Wiley & Neal, for the appellees.

11—11.—*Thomas Young et al.* v. *Sarah A. M. Young et. al.*

(Opinion by CRAIG, J., affirming.)

FILED AT SPRINGFIELD, MARCH 30, 1885.

1. RESCISSION — *Of sale of land for inadequacy of consideration.*—The fact that a son did not pay or agree to pay the value

of land conveyed to him by his father, can not defeat the title he aquired by such conveyance, and affords no ground for setting the same aside. Natural love and affection in such case is of itself a sufficient consideration for the conveyence.

2. CONSIDERATION — *Love and affection.*—A conveyance of land by a father to his son, not in fraud of creditors, may be sustained on the ground of natural love and affection, without the promise or payment of any money or other valuable consideration.

3. RESCISSION — *For fraudulent representations.* — When a father aged about seventy years, but capable of transacting ordinary business, conveyed a tract of land to his son, upon the verbal promise of the latter not relied on, and upon the statement of the son that a certain party was about to sue the grantee, and would take the land, and such other party resided near to the grantee, and it appeared from often repeated declarations of the grantee made afterward that the land was his son's and that he had given it to him, it was *held* that the conveyance could not be set aside in equity on the ground of undue influence and fraudulent representations on the part of the son.

4. To justify the rescission of an executd contract of sale for fraud on the part of the grantee, it is not only necessary to show misrepresentations of facts by clear proof; but such misrepresentations must be about matters material, or matters material to the interest of the grantor. If relating to an immaterial thing, or it is a matter of opinion, or relates to a fact equally open to the inquiry of both parties, a court of equity will not set aside the conveyance on the ground of fraud.

Writ of error to the Circuit Court of Shelby county: the Hon. JESSE J. PHILLIPS, Judge, presiding.

Messrs. HAMLIN & HOLLOWAY and Mr. ANTHONY THORNTON, for the plaintiffs in error.

The value of the land is shown to be $2,600. The consideration expressed in the last deed is $100, No money was paid, nor was there any agreement to pay any.

When a deed expresses a pecuniary consideration, and it is impeached for undue influence and fraud, the relation of parent and child, can not be set up to sustain the deed: Kerr on Fraud and Mistake, 191, 192; *Clarkson* v. *Hanway*, 2 Peere, Wms. 203.

The consideration expressed is so inadequate as to show imposition and oppression: *McArtie* v. *Eugart*, 13 Ill. 248.

Gross inadequacy of consideration is strong evidence of fraud: *Lowther* v. *Lowther*, 13 Ves. 103; *Underhill* v. *Harwood*, 10 Ves. 219; 1 Story's Eq. Jur., Sec. 240; *Judge* v. *Wilkins*, 19 Ala. 765.

A false representation which influences a party and causes him to make a contract will avoid it, whether the party making the same knew its falsity or not: *Lockbridge* v. *Foster*, 41 Cam. 573; *Whelan* v. *Whelan*, 3 Cow. 537.

When a deed is obtained without any consideration paid, and by deceit and false representations, the transaction can find no sanction in a court of justic: *White* v. *White*, 89 Ill. 464.

Counsel also made points upon the facts shown by the evidence and in relation to *laches.*

Messrs. MOULTON, CHAFFEE & HEADEN, for the defendants in error.

Even if representations were false and fraudulent, it must appear that the party was influenced by them—relied on them and would not have acted only by reason of such representations: *Douglass* v. *Litler*, 58 Ill. 342; *Tuck* v. *Downing*, 76 Ill. 71; *Henry Fauntleroy* v. *Wilcox et al.* 80 Ill. 477.

Parol evidence to defeat a deed must be clear and convincing: 78 Ill. 514, *Wilson* v. *McDowell.*

The presumption is that all deeds are made in good faith and without fraud: 82 Ill. 589, *O'Neal* v. *Boon et al.*

The party must rely upon the representations. If the means are readily open to

him to find out their truth or falsity, and he does not inform himself, he can not complain: 3 Scam. 32.

The declarations of the party have always been considered competent and important evidence to explain the acts and intention of parties: Redfield on the Law of Wills, First Ed. 1864, page 526, Secs. 34, 35, 36 and note 39; Page 529, Sec. 42; Page 530, Sec. 43; *Taylor* v. *Kelly*, 31 Ala. 59; 40 Penn. St., *Neel* v. *Potter*, exactly in point; 61 Ill. 513, *Uhlich* v. *Muhlke*, 1 Green. Ev. Sec. 108.

The violation of a parol promise to convey or re-convey land will not constitute such a fraud as to take a case out of the Statute of Frauds: 45 Ill. 76. *Rogers* v. *Simmons*; 13 Ill. 236, *Perry* v. *McHenry*.

A voluntary conveyance is good between the parties; 63 Ill. 511, *Willmen* v. *Dunn*; 1 Gilm. 85, *Lowery* v. *Orr*.

19—16—*Thomas J. Cox* v. *The Massachusetts Mutual Life Ins. Co.*

(Opinion by SHELDON J. affirming.)

FILED AT SPRINGFIELD, MARCH 30, 1885.

1. USURY—*Commissions paid to agent.*—Where an agent of an insurance company employed by the company to solicit applications for insurance only, who is not its agent to make loans for money, on making application to the company for a loan for another, retains out of the sum loaned a commission for his services, and the borrower gives his note for the full amount, and for the payment of the highest legal rate of interest, the exaction of such commission from the borrower, will not render the transaction usurious.

Appeal from the Appellate Court for the Third District; heard in that court on appeal from the Circuit Court of McLean county; the Hon. FRANKLIN BLADES, Judge, presiding.

Messrs. WILLIAMS, BURR & CAPEN and Messrs. STEVENSON & EWING, for the appellant.

A loan agent who is required to learn the situation of property given in security for money loaned, appoint appraisers to ascertain its value, employ attorneys to examine the abstracts of title, prepare the notes and deeds of trust to be executed by the borrower, receive the drafts and pay the money over to the borrower, is the *agent* of the lender in making the loan of money: *Payne* v. *Newcamb*, 100 Ill. 611.

A money lender will be charged with notice of the commission paid to his agent where it is understood between the lender and his agent that the latter, in effecting a loan form the former, is to get his commission from the borrower for his services in examining a title to the property, having the same appraised, etc. 100 Ill. 611.

If the agent, with the consent or knowledge of the money lender, makes a loan and receives compensation from the borrower for his services, the transaction is *usurious*: *Philo* v. *Butterfield*, 3 Neb, 259; *Cheney* v. *White*, 5 Neb. 261.

As long as any portion of the principal remains, upon which the usurious interest accured and paid, such usurious interest may be deducted from or set of against the remaining principal, and this can not be prevented by a settlement between the parties. The settlement is not conclusive where there is usury: *Payne* v. *Newcomb*, 100 Ill. 611.

The requirement that the borrower should take a life Insurance policy in connection with the loan, and as a condition upon which the loan was granted, the highest legal rate of interest being reserved in the notes, makes the loan usurious: *National Life Ins. Co.* v. *Harvey*, 7 Fed. Rep. 805; *Ins. Co.* v. *Kittle*, 1 McCrary, U. S. Circuit Court Rep. 234.

Mr. B. S. EDWARDS, for the appellee.

To make a loan usurious, there must be an intent on the part of the lender to take more than the legal rate of interest: *Palmer* v. *Call*, 7 Fed. Rep. 720.

The fact that an agent, without the knowledge or authority of his principal, upon loaning the money of the latter, exacts a sum

in excess of lawful interest, does not make the loan usurious: *Phillips* v. *McKellar*, 92 N. Y. 32.

No decision of this court is in conflict with this view.

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SUPREME COURT OF INDIANA.

WAREHOUSE — STORING OF GRAIN AND MIXING IT WITH OTHER GRAIN—LIABILITY OF WAREHOUSEMAN IN CASE OF ACCIDENTAL LOSS. — Where a warehouseman receives grain on deposit to be stored for the owner and, mixes it with other grain in a common bin, from which he is occasionally selling and taking away, and also buying and adding thereto other grain, but always keeping enough on deposit to supply depositors with their deposits on demand, in case of accidental loss by fire, not arising from any negligence of the warehouseman, it is *held*, that he is not liable to a depositor for the value of the grain in store. In support of this is cited, *Lupton* v. *White* 15 Vesey Jr. 432: 2 Kent. Com. (12th Ed.) 365, 590; Story on Bail. Sect. 40: 2 Schouler Pers. Prop. Sec. 46: There seems to be some conflict of opinion in the cases cited, but the weight of authority is that the contract is one of bailment and not of sale.—*Rice* v. *Nixon*.—(Elliott C. J.) Ins. Law Journal May, 1885.

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SUPREME COURT OF KANSAS.

HOMESTEAD—ADOPTION OF MINOR CHILD —HEAD OF FAMILY DYING INTESTATE.—George Weeks died in 1882 leaving as his only heir at law his widow, the defendant in this case. On November 3rd 1884 defendant adopted a child, Nellie Williams, in accordance with the statute in such cases provided. On the 30th of August 1884 plaintiff recovered a judgment against defendant and on November 28th 1884 caused an execution to issue on said judgment. The Sheriff levied upon and sold the homestead of the widow, and upon the motion to confirm the sheriff's sale the question is raised as to whether said land was exempt under the homestead laws of the state. *Held* that the widow having adopted a child as above stated, she is to be considered the head of a family, and as such entitled to the exemptions in such case provided. *Held* further that creditors are stopped from showing that the child was adopted for the purpose of enabling her to hold said land as a homestead—*Mathews* v. *Weeks*.—(GuthrieJ) —District Court of Shawnee Co.—Kansas Law Journal.

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DIVORCE—ACTION FOR, BY AN INSANE PERSON, BY GUARDIAN. — This action was brought by John Tucker as guardian of Margaret Birdzell, against Caleb J. Birdzell, her husband, for divorce and alimony. In the trial court the right to a decree of divorce was denied, but alimony was granted in the sum of five thousand dollars to be in full of all claims that might ever be made by plaintiff, upon the estate of defendant. From this judgment defendant appeals. *Held* that the court below ruled correctly in denying a decree of divorce but erred in granting alimony. The statute providing for alimony declares that the wife may obtain alimony without a divorce, *for any of the causes for which a divorce may be granted.* The Court say: "After a careful consideration of this case we have come to the conclusion that the guardian of an insane woman cannot maintain an action against her husband for alimony. Judgment reversed.—*Birdzell* v. *Bridzell*.—(Valentine J.) —Filed April 10, 1885.

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KENTUCKY COURT OF APPEALS.

CONDITIONAL WILL — "IF I DIE AWAY FROM HOME I BEQUEATHE" &C. — A paper writen by William A. Likefield and admitted to probate as his last will is as follows:

Louisville Jan. 14, 1859.

"If any accident should happen to me that I die from home, my wife, Julia Ann Likefield, shall have every thing I possess, the house and lots, and the money that is due to me, and for her to hold it as her own." WM. A. LIKEFIELD.

Held that his dying away from home was not a condition precedent to the will taking

effect, and although the testator died at home the wife was entitled to the estate under it.

In *Parsons* v. *Lanoe* 1 Vesey Sr. 190 the words: "If I die before my return from my journey to Ireland &c." were held to be a condition precedent. In *Sinclair* v. *Hone*, 6 Vesey Jr. "In case I die betore I join my beloved wife &c." were likewise held a condition precedent. Likewise in Todd's will, 2 *Watts* & *Sergeant* 145.: *Massie* v. *Griffin* 2 Met. (Ky.) 364: In *Maxwell* v. *Maxwell* 3 Met. (Ky.) 101 words of like import referring to a specific journey or a specific time were *held* to be a condition precedent.

Swinburne says "Albeit the testator, makes his testament by reason of some great journey, yet it is not revoked by the return of the testator." In *Strauss* v. *Schmidt*, 3 Phill, 209 the words "In case I should die on my travels &c." were held not to be a condition precedent. In like maner in Re Tylden 18 Jurist, 136, a will wherein the words: "If it please Almighty God to call me suddenly from this mortal life, *and during my absence from home* I leave &c" occurred, and the will was sustained although the testator died at home. — *Likefield* v. *Likefield.*— (Holt J.)—Feby. 28, 1885.— Ky. Law Rep. April, 1885.

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SUPR. COURT OF MASSACHUSETTS.

SUNDAY LAW — TRAVELLING ON THE LORD'S DAY.—The plaintiff having made a social call on a friend on the sabbath was returning home, and while thus walking along on the street, in the City of Worcester. slipped on an accumlation of ice and snow and broke his leg. The Judge in the trial court ruled that, as a matter of law, the plaintiff was travelling on the Lord's day in violation of the statute, and therefore could not recover, and ordered a verdict for defendant. Plaintiff appealed.

Held that walking out for the purpose of making a social call, cannot be said to be travelling within the meaning of the Statute. —*Barker* v. *City of Worcester.*—(Allen J.)— Filed March, 1885.

SUPREME COURT OF MICHIGAN.

DEED EXECUTED IN BLANK—NAME OF GRANTEE WRONGFULLY INSERTED.—B. and his wife, the defendant, executed a deed of certain land owned by B., leaving the name of the grantee blank, and defendant, with whom the deed was left to use for her personal benefit, filled in the name of her brother as grantee and delivered the deed to him to hold the property for her, and he paid her upon delivery $8,000, which was used in paying off incumbrances on the land. B. conveyed his interest in the land to defendant, and upon the death of her brother his administrator filed a bill to subject the land to a lien in the nature of a mortgage for the money paid to defendant. *Held*, that the lien was valid and should be enforced. — *Lockwood* v. *Basset.*—(Cooley J.)—14 N. W. Rep.

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SUPREME COURT OF WISCONSIN.

TAX TITLE — ADVERSE POSSESSION. — Although, under section 1186 of the Revised Statutes, a party claiming title under a tax deed must have held actual and adverse possession of the land during three years next after recording of the tax deed, adverse possession under a tax deed, although such deed may be void, for a period of 10 years, notwithstanding that such possession did not commence until after the expiration of three years from the time of recording such tax deed, will ripen into a prefect title, so as to bar any and all controversies respecting the same, under section 4212 of the Revised Statutes, for this must be considered an adverse possession for 10 years under a written conveyance of the premises. — *McMillan* v. *Wehle.*—(Cassoday J.) 13 N. W. Rep.

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TEMPORARY OBSTRUCTION OF NAVIGABLE STREAM — DAMAGES. — Plaintiff sued for damages resulting from obstructions in a navigable river by defendants, whereby plaintiff was prevented from floating logs down such river, and defendants set up as a counter-claim that said river being tortuous

they had cut a canal from one bend to another therein, and so facilitated and cheapened the floating of logs down such river, and for the use of such canal and men employed by defendants, plaintiffs were indebted to them in a certain sum. *Held*, that as to the use of the canal the defendants must be held to have dedicated it to the public, and that they could not charge plaintiff therefor; and as to the charges for the men, they did not arise out of the transactions set up in the complaint, and such a counter-claim could not be sustained. — *Weatherby* v. *Micklejohn*.—(Cassoday J.) N. W. Rep. 13.

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ENGLISH HIGH COURT Q. B.

MURDER—COMMITTED ON THE HIGH SEAS FOR THE PURPOSE OF SAVING THE LIFE OF OTHERS.—Three persons, Dudley, Stephens and Parker being lost at sea, and in extremeties for want of food, the two former Thomas Dudley and Edwin Stephens, take the life of their companion, Richard Parker. They are subsequently put upon trial on an indictment for murder. It is urged in their defence that, in order to save one's own life, he may take the life of another. Lord Coleridge in the opinion says: "There remain to be considered the real question in the case, whether killing, under the circumstances, be or be not murder. The contention that it could be any thing else, was to the minds of us all both new and strange; and we stopped the Attorney general in his negative argument, that we might hear what could be said in support of a proposition which appeared to us at once dangerous, immoral and opposed to all legal principle and analogy." Lord Hall says: If a man be desperately assaulted, and in peril of death, and cannot otherwise escape, unless to satisfy his assailant's fury, he will kill an innocent person then present, the fear and actual force will not acquit him of the crime and punishment of murder, for he ought rather to die himself than to kill an innocent man." "It is therefore" says the court, "our duty to declare that the prisoner's act in this case was willful murder."—*Reg.* v. *Dudley* and *Stephens*.—(Coleridge C. J.)—Chicago Leg. News, May 2d, 1885.

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SUPREME COURT OF ILLINOIS.

Dodgson v. *Henderson*.

EXTENSION OF TIME OF PAYMENT—CONSIDERATION—WHEN BILL MAY BE FILED.

CRAIG, J. — This was a bill in equity brought by Edwin Henderson to enjoin the prosecution of an action brought to collect a certain promissory note executed by George B. Allen, as principal, and complainant as surety, bearing date November 6, 1875, whereby they jointly and severally promised to pay twelve months after the date thereof to Christopher Dodgson, two thousand dollars, with interest at ten per cent. per annum. Dodgson died April 4, 1878, and the executors of the estate, with George B. Allen, the principal of the note, were made parties defendant to the bill. It is alleged in the bill that Allen was principal and complainant surety on the note; that Allen paid the interest on the note as it became due up to November 6, 1876, and on January, 10, 1877, Dodgson agreed with Allen to extend the time of payment to the 6th day of November, 1879, in consideration of the promt payment by Allen, annually, of the interest; that Allen, in consideration of said promise of extension of the time of payment agreed with Dodgson to keep the amount named in said note ($2,000) until November 6, 1879, and pay the interest thereon annually; that the extension of the time of payment was made without the knowledge or consent of the complainant.

It is also set up in the bill that an action at law had been brought in the Circuit Court of Greene County against Allen and Henderson on the note, which was pending when the bill was filed; that Henderson set up as a defense to the action that he was surety on the note, and that after the note became due Dodgson for a valuable consideration, agreed with Allen to extend the time of payment to the 6th day November, 1879, without the knowledge or consent of the complainant.

It is also alleged that Allen is the only person by whom the agreement to extend the day of payment can be proven; that executors will not consent that Allen may appear as a witness and testify in the actiou at law.

The bill contains other allegations, but it will not be necessary to state them here ,as enough has been set out to show the grounds upon which the complainant relies for relief.

It is apparent from the allegations of the bill, as well as from the evidence introduced in support of the bill, that complainant could not make a defence to the action at law, for the reason that Allen who was the only person who knew that an agreement had been made to extend the time of payment of the note, was not a competent witness in the action at law. Sec. 2, Chap. 51, R. L. 1874, p. 483, expressly excludes a defendant from testifying in an action brought by an executor like the one brought against Allen and Henderson. Resort to a court of equity was therefore a necessity—the only tribunal where relief could be obtained.

In Bradshaw, Adm'r. vs. Combs, 102 Ill. 428, we held that a bill of equity was an appropriate remedy in a case of this character, and that the principal on the promissory note, on a bill filed against an administrator or executor, by the surety, was a competent witness. As to complainant's right to file the bill, and upon the question of the admissibility of Allen as a competent witness, the case cited is conclusive, and no further notice need be taken of that question.

The next question to be considered is whether after the note became due the time of payment was extended by an agreement between the payee of the note and the principal maker, Allen, based upon a valid consideration, and the effect of such a contract. Allen testified that in the latter part of the year 1877 an agreement was made between him and Dodgson that the time of payment should be extended another year, until November 6th, following; that he agreed to keep the money for that time, and pay the interest promptly. We think the contract to extend the time of payment valid and based upon a sufficient consideration. The effect of the transaction was this:

About the end of the second year after the loan was made, Dodgson agreed to extend the time of payment one year if Allen would keep the money that time and pay ten per cent. interest thereon promptly at the expiration of the time. The agreement to keep the money another year and pay the interest thereon was a sufficient consideration for the promise of the payee to extend the time of payment. It may have been, and doubtless was, of great benefit to Dodgson to secure a loan another year at ten per cent. interest. Had the money been paid in, a customer might not be found ready to borrow at so large a rate of interest, and hence the money might lie idle in the owner's hands a whole year. But however that may be, there can be no doubt that the agreement to keep the money a whole year and pay a specified rate of interest, is a consideration which will support the agreement to extend the day of payment.

As to the effect of an agreement to extend the time of payment upon the rights of the surety when made witout his knowledge or consent, the law is well settled. As early as *Davis* v. *The People*, 1 Gilman, 409, this court is held: that if the creditor by a valid and binding agreement without the consent of the surety, gives further time for payment to the principal, the surety is discharged both at law and in equity, and it makes no difference whether the surety may be thereby actually damnified or not. The same doctrine was announced *Waters* v. *Simpson*, 2 Gilman, 570, and in *Orossman* v. *Wohllen*, 20 Ill. 537.

The contract of a surety is one that should be construed strictly, and in no case can he be held liable beyond the terms and conditions of the contract to which he gave his consent; and any binding contract entered into between the principal debtor and the creditor, which works a substantial change

in the orginal contract, when made without the consent of the surety, will relieve the surety. An agreement based upon a good consideration, and binding on the parties, produces this result. Such was the contract proven in this case.

We are, therefore, of opinion that the decree of the Circuit Court was correct and the judgment of the Appellate Court will be affirmed.

AFFIRMED.

H. C. Withers, for appellant,

James R. Ward, for appellee.

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UNITED STATES CIRCUIT COURT DISTRICT OF KANSAS.

Mortgage Company v. *Wilson et. al.*

FILED APRIL 13, 1885.

CONTRACT TO PAY INCREASE OF INTEREST IN CASE OF DEFAULT IN ANY INSTALTMENTS—NOT ALLOWED AS A PENALTY.

On exceptions to master's report.

On June 9, 1881, the defendant made a note to the order of the plaintiff, to pay on the first day of July, 1886, the sum of sixty-five thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually. In the note was a condition that if the note was not payed at maturity it should bear interest at the rate of twelve per cent. per annum from the date thereof. To the note were attached ten interest coupons, calling for the payment, at the semi-anual period, of the note, the amount of the interest, at seven per cent. In each coupon was a clause that if not paid when due the note was to draw twelve per cent. interest after maturity. The note was secured by a mortgage, which contained the following clause: "The said first parties further agree that if they fail to pay any of said money, either principal or interest, within thirty days after the same becomes due, or fail to perform or comply with any of the foregoing conditions or agreements, the whole sum of money herein secured may become due and payable at once, at the election of said second party, its representatives or assigns, without notice of such election to the first party, and this mortgage may thereupon be foreclosed immediately for the whole of said money, interest and costs, together with statutory damages in case of protest; and upon such election by said second party, its legal representatives or assigns, that the whole sum herein secured becomes due and payable at once, or if default be made in payment of the principal sum when due, or in default of payment of any sum herein covenanted to be paid for the period of thirty days after the same becomes due, or in default of performance of any convenant herein contained, the said first parties agree to pay to the said second party, its legal representatives or assigns, interest at the rate of twelve per cent. per annum, computed annually on said principal note, from the date thereof to the time when the money shall be actually paid. Any payments made on account of interest shall be credited in said computation so that the total amount of intesest collected shall be and not exceed the legal rate of twelve per cent." The defendant failed to pay the second interest coupon, and the plaintiffs, after electing to declare the whole mortgage due, brought an action to foreclose the same. The plaintiff, before the master in chancery, claimed interest at twelve per cent. on the note from the time the default was made and election declared by the plaintiff, and the master allowed the same. Exceptions to his report were filed, and those exeptions are now heard.

J. D. S. Cook, Esq., for complainant.

Howard M. Holden, Esq., in person.

FOSTER, J.: Had the agreement between the contracting parties stipulated for twelve per cent, interest on default of any covenant in the mortgage, commencing from the date of such *default* and not relating back to the *date* of the *contract*, there could hardly be a doubt, but it would have been a valid contract, and not in the nature of a penalty. I can see no objection to parties entering into an agreement that, on failure of payment, or other covenant, the whole debt shall be-

come due, at the election of the creditor, and shall then and thereafter draw a greater rate of interest. The master reports and the complainant asks for the increased rate of interest only from the time the mortgagee declared its election to make the whole debt due, which was some time after default by mortgagor. Is this contract sufficient to sustain that claim, or must it stand or fall as a whole? Assuming that so much of the contract as provides for computing the the increased rate of interest from date of the note until default is in nature of a penalty, does it present a case materially different from a suit on a penal bond? In such cases courts do not apply such a rule as the *whole or nothing*. The uniform rule is to remit the penalty, and give judgment for the amount actually and equitably due. Contracts for penalties on a failure to perform agreements are not necessarily and absolutely void *in toto*. They are not considered repugnant to public policy or good morals, although courts may consider it against good conscience to enforce them according to their terms. This mortgage provides that in case of default by the mortgagor, in any of the covenants therein contained, the principal debt should draw interest at twelve per cent. per annum (instead of seven per cent.,) to be computed from the date of the note until the money is actually paid. Of course those periods of time cover and include the date from which this interest has been computed—*i. e.*, from the time default was declared by the mortgagee.

There are quite a number of reported cases which hold that a greater rate of interest may be contracted for, contingent on default, commencing from the *date of the note*, and it seems to me the weight of authority in law, if not in equity, is to that effect. *Satterwhite* v. *McKie*, Harper, R. 297; *Daggett* v. *Pratt*, 15 Mass. 177; *Horner* v. *Hunt*, 1 Blackf. 213; *Gully* v. *Remy*, 1 Blackf. 69; *Rumsey* v. *Mathews*, 1 Bibb. Ky. 242; *Jasper Co.* v. *Tavis*, 76 Mo. 13; *Reeves* v. *Stipp*, 91 Ill. 609. *Per contra*, *Weller* v. *Long*, 6 Mumford Va., 71; *Triman* v. *Hinman*, 16 Ill. 400; 9 Paige, 101.

The exeptions to master's report must be overruled, and it is so ordered.

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ENGLISH HIGH COURT OF JUSTICE.

Lamb v. *Munster L. R. 10 Q. B.*

PRIVILEGE OF WITNESS—ANSWER WHICH MIGHT TEND TO CRIMINATE.

MOTION to rescind an order of Watkin Williams, J., in chambers.

The action was for libel, and the defendant by his statement of defence denied the the publication of the alleged libel. Interrogatories being administered asking him whether he did not publish the libel, his answer was: "I decline to answer all the interrogatories upon the ground that my answer to them might tend to criminate me." A master ordered a further and better answer; but his order was rescinded by the learned judge.

FIELD, J. I think the learned judge at chambers was right, and that the answer to the interrogatories is sufficient. The point raised is important, for the principle of our law right or wrong, is that a man shall not be compllled to say any thing which criminates himself. Such is the language in which the maxim is expressed. The words "criminate himself" may have several meanings, but my interpretation of them is "may tend to bring him into the peril and possibility of being convicted as a criminal." It is said that a man is not bound to do so. There have been various authorities on the question how the point is to be raised. Suppose a witness in the box declines to answer a question. He is asked why? He answers: "Because it may tend to criminate me." But the judge tells him that he must go further and swear that he believes the answer will tend to criminate him. He answers: "I do not know, but I believe may do so." The judge tells him that he must go further and say that he is advised that the answer may tend criminate him. He perhaps replies, "I have no one to advise me in whose advice on the subject I should trust." Then it be-

comes the duty of the judge to look at the nature and all circumstances of the case and the effect of the question itself, to see whether it is a question the answer to which will really tend to criminate the witness. If he said, "I think it may," or "it may" or "it might," or "I believe it will," or "I am advised it will;" I should not regard the form of words, but look to see whether answering would be likely to have or probably would have such a tendency to criminate, and bearing in mind the cardinal rule that a man shall not be compelled to criminate himself, I should almost prefer a man to be careful and say the answer might tend to criminate, and I should be slow to commit him to prison for not doing that which the law says he is not bound to do. In this case the tendency to criminate is evident. The statement of claim charges the defendant with the publication of a false and malicious libel, the remedy for which is either by action or indictment. It would be competent for the plaintiff after having got an answer to the interrogatories, to indict the defendant for libel, and the answer might establish the very first step the prosecutor would have to prove.

I do not think the authorities lay down any principle on which this aplication for a further answer can be rested. In *Fisher* v. *Owen*, 8 Ch. Div. 645, the point was only whether the question could be put, and there are many, amongst whom is Brett, L. J., who think it is a mistake to allow a man to refuse to answer on the ground that his answer might tend to criminate him, for this reason, that although a learned judge may regard the answer without being influenced by it, yet on the interrogatories and the refusal of the defendant to answer them being read to a jury, who are asked whether they can doubt that the defendant really did what he was asked about, they would at once find that they did. In *Allhusen* v. *Labouchere*, 3 Q. B. D. 654, 662. Brett, L. J., doubts whether the equity doctrine is perfectly applicable to the courts of common law. But the Lord Justice says: "That however is past controversy, and the question has been settled by the Court of Appeal." A decision of Lord Hatherley when Wood, V. C., was cited and Mr. Woollet produced a case in which there were the same words as those under discussion, but I find in the cases that the learned judges used words such as "will," "may," or "might," indifferently, without laying any stress on the verb. I think there is no substance in the objection to the present answer, and that it is quite sufficient. It is very desirable that the rule should be in favor of the principle of law.

STEPHEN, J. I am of the same opinion. I entirly agree with my learned brother. In every case the principle itself has to be considered, and it would not be well to lay down any kind of strict rule as to the particular form of words in which persons are to be compelled to express their opinion as to whether or not the answer to questions would criminate them. When the subject is fully examined, it will, I think, be found that the privilege extends to protect a man from answering any question which "would in the opinion of the judge have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge." Stephen's Dig. of the Law of Ev., (3d ed.), art. 120, p. 121. That is what I understand by the phrase "criminating himself." It is not that a man must be guilty of an offense, and say substantially, "I am guilty of the offence but I am not going to furnish evidence of it." I do not think the privilege is so narrow as that, for then it would be illusory. The extent of the privilege is, I think, this: the man may say, "if you are going to bring a criminal charge, or if I have reason to think a criminal charge is going to be brought against me, I will hold my tongue. Prove what you can, but I am protected from furnishing evidence against myself out of my own mouth." I do not think the cases cited go any further than this, viz., that the court which has to decide must be satisfied on the oath of the witness that he does object on that ground, and that his objection

is bona fide. In *Reg.* v. *Boyes*, 1 B. & S. 311; 30 L. J. (Q. B.) 301, a case not cited in argument, but a somewhat remarkable one, a man called as a witness on an information for bribery refused to answer any question as to his knowledge of the defendant, on the ground that by answering he might criminate himself; a pardon under the great seal was thereupon handed to the witness, who still refusing, was compelled by the judge to answer. This ingenious point was taken viz., that the pardon was not pleadable to an impeachment by the House of Commons, and that Boyes when he refused to answer, after the pardon was handed to him did so under the belief of an impeachment to which the pardon would be no answer. Cockburn, C. J., says: "It was contended that a bare possibility of legal peril was sufficient to entitle a witness to protection; nay, further, that the witness was the sole judge as to whether his evidence would bring him into danger of the law; and that the statement of his belief to that effect, if not manifestly made mala fide, should be received as conclusive. With the latter of these propositions we are altogether unable to concur." But he goes on to say that "the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer," and also that the danger must be real and appreciable. That is on the whole the principal authority for my view of this case, that a man is not to be forced to answer any question if the witness swears that the answer "may" or "will," or "would" endanger him (I care not for the form of words in which he expresses it) and in the opinion of the judge the answer may, not improbably, be of such a nature as to endanger him. The defendant in the present case is asked whether he has published a libel, and has refused to answer on the ground that it "might" endanger him, and I think that a person who wished to annoy him and cause expense might endanger him, and I cannot say it is an improbable contingency. Having regard to the authority I have cited, it seems to me that a man may say, "I think the answer will tend to criminate me," meaning thereby "would tend to bring a criminal prosecution against me for a crime of which I am in fact innocent, but of which I might on the facts be very probably accused."

ORDER AFFIRMED.

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ENGLISH COURT OF APPEAL.

NEGLIGENCE — PERSONAL INJURY AND DAMAGE TO PROPERTY, BOTH ARISING FROM SAME CAUSE—DISTINCT CAUSES OF ACTION—Plaintiff, a cab-driver, while driving his cab, come in collision with a two-horse van, by reason of the negligence of the driver of the van, and plaintiffs cab was injured, and he being thrown from his seat received personal injuries. He sued the owner of the van for damages done to the cab and recovered judgment, which defendant paid. Subsequently he brings this action to recover damages for the personal injury sustained. To this action defendant pleads former adjudication. *Held* that the injury to the cab and the personal injury formed separated and distinct causes of action and, recovery for the former was no bar to an action for the latter.—*Brunsden* v. *Humphrey*—(Brett J.)—Alb. Law Journal April 25, 1885.

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The Chicago Law Journal.

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SPECIAL NOTICE.

THE publication of the LAW DIRECTORY which was promised in June, has unavoidably been delayed for three or four weeks. It is now expected that it will be ready for delivery during the latter part of this month. (JULY.)

NEW PUBLICATIONS.

LEADING CASES IN THE LAW OF REAL PROPERTY decided in the American Courts, with Notes by George Sharswood LL. D. and Henry Budd, of the Philadelphia Bar. — Vol. 2, Notes by Henry Budd. — PHILADELPHIA M. MURPHY.

About to years since the first volume of this series of *Leading Cases* was published and a notice of the work appeared in the May No. Vol. 4 of this JOURNAL. We were greatly pleased with the book and with the general plan of the series as announced by the publisher. Upon the death of Judge Sharswood, we had some apprehensions that his death might seriously detract from the merits and value of the succeeding volumes, but an examination of the second volume dispels any such fears.

These apprehensions arose in a measure perhaps from our acquaintance with Judge Sharswood as a Judge and with his writings on elementary law, and the consequent belief, that of all american lawyers, Judge Sharswood was the best qualified to give us the law of *Real Property*, boiled down and expressed in the shortest possible form. An examination of the second volume gives evidence that the erection of the structure which was planned and reared one story high by the master workman, is being raised still higher by skillfull hands, in harmony with the original design.

The first and second volumes contain twenty-six leading cases and the subjects to which these cases relate are as follows:

Fee simple Estates, Creation of, by Deed and by Devise; Estates Tail, Creation of, Incidents and Statutory Regulations; Estates on Condition; Conditional Limitation; Life Estates; Dower; Curtesy; Aliens, and Rights of Aliens, with reference to Real Property; Base, Qualified or

Determinable Fee; Estates for Years; Tenancy at Sufferance; Tenancy at Will; Tenancy from Year to Year; Farming on Shares; Vendee in Possession under Contract of Purchase; Remainders, Vested Remainder; Contingent Remainder; Cross-Remainders; Executory Devises, Definite and Indefinite failure of issue.

The notes of the Editor are so elaborate as to constitute an exhaustive digest. The first case in this volume is that of *Scheetz* v. *Fitzwater* (5 Penn. St. 126), relating to a *Base, Qualified* or *Determinable Fee*, and we give the following list of subjects which are exhaustively discussed in the nots appended to this case.

1. Enlarged and restricted use of the term *Base Fee.*

2. Distinction between Base Fee and Estate on condition subsequent.

3. Distinction between Base Fee and Conditional limitation.

4. Classes of Base Fees.

5. Manner of Creation of Base Fee.

6. May be created without the use of techincal words.

7. Construction of deed alleged to create a Base Fee.

8. Base Fee created where possession is taken under articles of sale.

9. Base Fee, a Fee-Simple notwithstanding its determinable quality.

10. Base Fee, if conveyed by grantee, is subject to the qualification in the hands of the subsequent grantee.

11. Descent of Base Fee.

12. After conveyance of Base Fee, the grantor retains only a possibility of reverter.

13. On cessation of Base Fee Reentry not necessary to revest estate in grantor. When estate has expired how determined.

14. When the object of limitation becomes unpossible, the estate will revert.

The foregoing notes cover twelve pages. The notes in the case which follows—*Horner* v. *Leeds*—relating to *Estates for Years* occupy Ninety pages. In the two volumes *over six Thousand* cases are cited. These volumes cannot fail to be of great value to any lawyer in general practice and especially to those most interesed in the law of Real Property. The mechanical execution of the book is in good style and well bound.

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NOTES OF CASES.

OCCUPANTS OF APARTMENT HOUSES — In large cities where houses are in many cases accupied by more than one family, the rights privileges and obligations of the several tenants give frequent cause for controversies which must be settled in a Court of Justice. In the case of *De Witt* v. *Pierson* 112 Mas. 8, where the tenant in the second floor was annoyed by the occupants of the floor below, by their singing loud songs and by immoral conduct, it was *held* that such a nuisance did not amount to an eviction and that complainant could not insist upon a diminution of the rent in consequence thereof.

The law of gravitation has frequently suggested the question, who is responsible for damage done by the percolation of fluids through from upper to lower stories of dwellings? In the case of *Carstairs* v. *Taylor*, L. R. 6 Eq. 223, it is held that the landlord is not responsible for damages arising from the mischievious excentricities of rats.

The Court says "Clearly there is no duty on the tenant of an upper story to guard against an accident arrising from the depredation of rats."

It has been held that an action will lie against the landlord, by the tenant of a lower story, for damages to his goods, from rain decending through the stories above: see *Toole* v. *Becket*, 67 Me, 544; *Priest* v. *Nichols*, 116 Mass. 401, also *Stapenhurst* v. *Amer. Mfg. Co.*, 15 Alb. 355.

In Illinois, unless the landlord has covenanted to repair he is not responsible for damages from water, either dirty or clean, coming down in his apartment through the carelessness of the tenant above; see *Greene* v. *Hague*, 10 Ill. 598: *Mendel* v. *Fink*, 8 Ill. 378.

ABATEMENT OF PUBLIC NUISANCES. — In the case of *Meeker* v. *Van Rensselaer*, 15 Wend. 397. it was *held*, that a dwelling house densly inhabited by poor people, in a filthy condition, is a public nuisance and may be abated by tearing it down, especially during the prevalence of any desease which is epidemic. In this case the house had been used as a tannery, and underneath the floors, were quantities of stagnant and putrid water.

In the case of *Welch* v. *Stowell* 2 Daug. (Mich.) 332 the city authorities had demolished a building because it had been used as a house of ill-fame and was therefore deemed a nuisance. The court said: "That which constitutes or causes the nuisance may be removed, thus, if a house is used for the purpose of a trade or business by which the public is endangered, the nuisance may be abated by removing whatsoever may be necessary to prevent the exercise of such trade or business; so a house in which gaming is carried on, to the injury of the public morals; the individual by whom it is occupied may be punished by indictment and the implements of gaming removed; and a house in which indecent and obscene pictures are exhibited is a nuisance, which may be abated by the removal of the pictures. Thousands of young men are lured to our public theatres, in consequence of their being the resorts nightly of the profligate and abandoned; this is a nuisance. Yet in this, and the other cases stated, it will not be contended that a person would be justified in demolishing the house, for the obvious reason that to suppress the nuisance such an act was unnecessary. So in the case before us, the nuisance was not caused by the building itself, but by the persons who resorted there for the purpose of prostitution."

The destinction between the case of *Meeker* v. *Van Rensselaer*, and the latter, *Welch* v. *Stowell*, is that in the former there was no way of abating the nuisance except by demolishing the house.—In the latter the removal of the house was not necessary.

EVASION OF AN AGREEMENT NOT TO CARRY ON A BUSINESS WITHIN PRESCRIBED LIMITS.—Controversies arising out of contracts for the sale of a business, together with the good will of the seller, are of frequent occurrence, and generaly arrise from an attempt to evade the true spirit and conditions of the agreement. In the case of *Smith* v. *Martin*, 80 Ind. 260, the appellee having sold his Milk-Route to appellant, bound himself not to sell milk or carry on the dairy business within the town of Crawfordsville. He continued however to carry on the dairy business on a farm near the limits of the city, and to sell milk to parties who took it from his farm and retailed it to citizens in Crawfordsville. *Held* that his agreement not to sell milk in the town of Crawfordsville was not broken by thus selling to parties outside of the town.

DONATIO CAUSA MORTIS—DELIVERY OF A BANK CHECK.—In *Matter* v. *Smither* it was *held* that a bank check is not a valid gift *causa mortis*. See also case of *Basket* v. *Hassel*, U. S. Supreme Court filed March 26, 1883, also *Harris* v. *Clark*, 3 Comst. 93 in which it is held that a written order upon a third person was not a valid gift. In *Nat. Bank* v. *Williams*, 13 Mich. 291 it is *held*, that a check upon a bank account is not of itself an equitable assignment of the fund. Where a check is delivered as a gift *causa mortis* it is not valid unless the money is obtained on the same before the donor's death.

BANKRUPTCY—PLEA OF DISCHARGE IN ACTION FOR FOREIGN DEBT.—In the case of *McDougell* v. *Carpenter*, Supreme Court of Vermont, (55 Vermont Rep.) where an action was brought by a citizen of Canada for a debt contracted and payable in Canada, prior to the adjudication and discharge in bankruptcy of the debtor, the Court said: "The main question is this: Does a discharge under the United States Bankrupt act operate in the courts of this state to bar the enforcement of a debt provable under

said act, but contracted and payable in Canada, by a person resident in this state to a person resident in Canada, who neither proved his debt in bankruptcy, nor in any way became a party to the proceedings, nor had any personal notice thereof? *Held* that the action for the debt is not barred.

SUICIDE AS A DEFENSE TO A LIFE INSURANCE POLICY.—In the case of *Shultz* v. *Insurance Company*, Supreme Court of Ohio 4 *Ohio Law Journal*, the action was upon a policy which contained the clause that the policy should be void if the assured should "under any circumstances die by his own hand." It is *held* that the policy was not voided by his death by his own hand while he was insane. The court says: "the phrase 'under any circumstances' must be disregarded as too general and uncertain to serve any purpose in construction of the proviso under consideration." In harmony with this is the case of *Jacobs* v. *Life Insurance Co.* 1 M. C. A. 632, where the policy contained the clause "Shall die by his own hand or act, voluntary or otherwise." The distinction is made between voluntary and criminal suicide and the suicide of an insane person.

In the case of *Murray* v. *N. Y. Life Ins. Co.* the action was brought on a policy which contained the clause that it should be void if the assured "should die in or in concequence of the violation of the laws." It appeared that the assured became engaged in a quarrel with one Berdell, and that he was shot by a pistol in the hands of Berdell from the effects of which he shortly afterwards died. *Held* that the verdict of the Jury in finding that the shooting was a natural consequence of the assured's unlawful assault, and that the verdict would not be disturbed by an appellate court.

NEGLIGENCE—THE DEGREE OF CARE AN EMPLOYER IS BOUND TO TAKE OF EMPLOYEE.—In an action against the L. & N. R. R. Co., for damages for injury caused to the plaintiff, an employee, the trial court instructed the jury that the railroad company was bound to the same care of an employee that "a prudent and careful man would take of *his family* if placed in a like situation. The case being carried to the Court of Appeals, it was *held* that this instruction was error.—Ky. Court of Appeals, Nov. 6, 1883.

INJURY TO PASSENGER IN A SLEEPING CAR—LIABILITY OF RAILWAY COMPANY.—Sleeping Cars now form a part of almost all railroad trains known as through trains, and in most cases, these cars belong to and are managed by a separate and distinct company. The question whether the railroad company is liable for damages for injury to passengers arising from negligence of the sleeping car company or not, is a question of interest. In the case of *Cleveland &c. R. R. Co.* v. *Walrath*, Supreme Court of Ohio, 8 Cin. Law Bulletin 294, it is held, that a passenger in a sleeping car, may properly assume, in the absence of notice to the contrary, that the whole train is under one management, and in such case may maintain an action against the railroad compay for injuries sustained through the negligence of employes of the sleeping car company. Cases cited, *Thorpe* v. *Railway Co.*, 76 N. Y. 402; *Kinsley* v. *L. Lake Shore R. R. Co.* 125 Mass. 54.

In the case of *Diehl* v. *Woodruff Sleeping Car Co.*, Supreme Court of Indiana, Nov. 28, 1882, where a passenger in a sleeping car had stolen, from him certain property while asleep in the car, it is *held* that there is an implied obligation of the company to keep watch over its patrons while asleep, and to use dilligence to prevent the theft of goods and money from their persons. It has been held that a Steamboat Company is liable for the value of goods stolen from a passenger during the night, while he is a sleep, and the obligation of a Sleeping Car Company is similar. See *Olum* v. *Southern P. P. Car Co.*, 1 Plip. 500, also *Pullman Palace Car Co.* v. *Smith*, 73 Ill. 360.

In the case of *Milburn by her next friend* v. *Milburn*, Supreme Court of Iowa, Dec. 8, 1882, the defendant filed in the probate court a paper purporting to be the will of her deceased husband, Hosea Milburn, and asked the same be admited to probate. She pleaded certain matters which she alleged revoked the will and objected to the probate of the will. To this plea a demurrer was interposed and was sustained.

Held that the birth of an illegitimate child after the execution of a will by its father, if the father *recognizes* the child, will cause a revocation of the will, the same as the birth of a ligitimate child, under existing statutes.

CONTRIBUTORY NEGLIGENCE—CHILD OF TENDER YEARS.—In the case of *Johnson Admr* v. *Chicago & North Westen Ry. Co.* Supreme Court of Wisconsin, Dec. 12, 1882, brought for causing the death of a child between six and seven years of age, it appeared that the child was playing upon the track when a passing engine ran over him and caused his death. It also appeared that the father of the child knew the child to be upon the track, and it was sought by the defense to charge the plaintiff with contributory negligence in allowing the child to be upon the track. The trial court on this ground granted a judgment of non-suit, and from this judgment the case is appealed.

Held that the mere fact of the child being seen upon the track at or near the crossing is not enough to establish contributory negligence as a matter of law, so as to authorize the court to take the case from the jury.

SUPREME COURT OF IOWA.

MUNICIPAL CORPORATION—LIABILITY FOR INJURY CAUSED BY DEFECTIVE SIDEWALK—CONTRIBUTORY NEGLIGENCE.—In an action to recover for injuries received by reason of a defective sidewalk it was insisted by defendant.

1. That defendant could not recover if she knew of the defect in the sidewalk.

Held, that if a party has knowledge that a sidewalk is out of repair, he is still entitled to recover for an injury sustained, if he exercised a proper care while walking. He must have used ordinary care to discover such defect and to avoid danger.—*Munger* v. *City of Marshalltown*—(Beck. J.)—N. W. Rep. Oct. 1882.

CONDITIONAL SALE OF GOODS—DELIVERY—Plaintiff sold to defendant Winters a lot of goods, and at the time of sale Meredith the other defendant being present agreed to loan Winters $400 the amount which it was supposed would pay for the goods. When the goods where invoiced they amounted to $601. Meredith refused to loan that amount of money, and Winters thereupon refused to remove the goods he had purchased. Plaintiff claiming that the contrac' was executed brings this action to recover for the price of the goods. Judgment was rendered for plaintiff in the lower court and defendant appeals. *Held* that the lower court erred in instructing the Jury that the price was agreed upon, and that the plaintiff was entitled to recover. The court thus assumed the authority of the jury.—*Bowersock* v. *Winters et al.*—(Beck J.)—Dec. 7, 1882.

BANKRUPTCY—LEGAL TITLE TO REAL ESTATE IN BANKRUPT AND EQUITABLE TITLE IN ANOTHER, MUST BE ADJUDICATED IN THE UNITED STATES COURT. — Defendant assigned and delivered to Booge & Co. a mortgage for collection. Booge & Co. proceed in their own name, to foreclose the mortgage. The property was sold and deeded to them by the Sheriff.

Whilst the legal title thus remains in Booge & Co., they are adjudged bankrupts and the legal title thus passes to their assignee in bankruptcy.

A mortgage was executed subsequently by defendant Price upon the same property and in an action to foreclose this mortgage the assignee of Booge & Co. defends. *Held*

that the State Court has no Jurisdiction.—*Smith & Crittenden* v. *Price.*—(Seevers J.) Dec. 7, 1882.

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SUPREME COURT OF ILLINOIS.

HEAD-NOTES TO OPINIONS EIDED AT MT. VERNON, AND PREPARED BY HON. NORMAN L. FREEMAN OFFICIAL REPORTER, TO APPEAR IN HIS REPORTS.

3-2.—*Sarah L. Bradley* v. *Leo H. Rees et al.*

(Opinion by DICKEY, J., reversing and remanding.)

FILED AT MT. VERNON, MARCH 26, 1885.

1. DESCRIPTION — *Suffieiency of, construed.*—A devise in a will of "the south-west quarter of the north half of section 14, town 8, range 2 W.," is not void for uncertainty in the description. It is the same as the south half of the west half of the north half of the section, and if the section is a mile square, the description embraces eighty acres off the south side of the north-west quarter of the section.

2. WILL—*Devisee takes only so much of land devised as the devisor owned.*—The fact that a testator did not own all of a tract of land devised by him by a good description will not justify the court in holding the devise void. The devisee, in such case, will take so much of the land described as the testator did own.

2. SAME—*Parol evidence to change devise of land.*—Where a will, duly signed and attested, devises land which by the words used embraces eighty acres in a larger tract, proof by parol that the testator directed the scrivener to draw the will so as to give only forty acres, is inadmissible. A mistake in drafting a will by the draftsman can not be shown and corrected upon parol evidence in such a case.

3. SAME—*Sufficiency of description of the devises—"The four boys."*—At the time of making his will a testator had seven sons, four of whom were minors living with him, the other three being men, married and having families of their own, and his will after devising a certain part of his land to his infant daughter, contained this clause: "the remaning land owned by me to be divided between the four boys," without any other disignation. *Held* that the words "the four boys," meant the four minor sons who were at the time living with testator as a part of his family.

4. WILL—*Ambiguity in, whether latent or patent.*—When a testator devised to his daugther the S. W. qr. of "the north half of sec. 14, town 8, range 2 W., the remaining lands owned by me to be divided between the four boys," it was held that there was no ambiguity on the face of the will, the inference therefrom being that he had but four sons, but on proof that the testator had seven sons, an ambiguity was made apparent, and being a latent one was explainable by parol evidence.

5. PAROL EVIDENCE—*To explain latent ambiguity in a will.*—Where a testator after a specific devise of land to his daughter added immediately after, these words: "the remaining land owned by me to be equally divided between the four boys," and the proofs showed that he had at the time seven sons, four of whom where minors residing with him and the other three being men and living in their own homes apart from the father, it was *held*, that a parol proof, not only of the previous facts known to the testator and of present circumstances, in the midst of which he made his will, bnt also his declarations made at the time of making the will, as well as before and after, might be resorted to to remove the ambiguity, if any, and to fix the objects of his bounty.

Writ of error to the Circuit Court of Jackson County; the Hon. DAVID M. BROWNING, J., presiding.

Mr. A. D. Duff and *Mr. Geo. W. Smith* for the plaintiff in error.

Mr. Geo. W. Andrews, for the defendants in error.

4.—*The Riverside Company, etc.* v. *William A. Howell.*

(Opinion by SHELTON, J., reversing.)

FILED AT MT. VERNON, MARCH 24, 1885.

1. TAXATION—*Statute relating to municipal, is mandatory.*—The power given to

city councils and board of trustees in villages by the general incorporation act to levy taxes, is subject to the restriction that such councils or boards shall ascertain the total amount of appropriations legally made, and that they shall, by ordinance, levy and assess such amount so ascertained. The act requires the annual appropriations to be first made by ordinance within the first quarter of the fiscal year, duly published, and their amount to be ascertained, and then that the levy and assessment shall be made by ordinance for the amount. These requirements being for the protection of the citizen are not directory, but mandatory. The power is by the manner and conditions prescribed for its exercise.

2. SAME—*Appropriation ordinance essential to levy of city tax.*—The requisite of an appropriation ordinance is a limitation upon the power of a city council to levy a corporate tax; and a failure to pass such an ordinance is not a mere formal defect and so is not cured by Sec. 191 of the Revenue Law, but renders the whole tax illegal. A strict compliance with this requirement is necessary to guard against the abuse of the taxing power conferred.

3. TAX TITLE—*Void if part of taxes are illegal.*—When a part of a tax for which a sale of real estate is made, is illegal, the sale will be void. This is so when judgment is rendered by default and the owner of the land does not appear and resist judgement. So, when the city taxes for certain years against lots are illegal for want of an appropration ordinance before tneir levy, and they are included in the judgment with other legal taxes, no title will pass by the sale under such judgment.

4, SAME—*Judgment by default for taxes not conclusive.*—A judgment against land by default for delinquent taxes is not conclusive against the owner as to the legality of all the taxes included in the judgment, and he may show that a part of the tax is illegal and thus defeat the sale in a collateral proceeding as in ejectment to recover the tax deed. Such a judgment is to be distinguished from a judgment confirming special assessments, which is conclusive upon the land owner.

Appeal from the Circuit Court of Gallatin County; the Hon. WM. C. JONES, Judge, presiding.

Mr. E. B. Green and *Mr. Carl Roedel*, for the appellant.

Where a part of a tax for which a sale of real estate is made, is illegal, the sale is void, and no title passes: *McLaughlin* v. *Thompson*, 55 Ill. 249; *Gamble* v. *Witty*, 55 Miss. 26; *Kemper* v. *McClelland's Leese*, 19 Ohio, 308; *Dogan* v. *Griffin*, 51 Miss. 780.

Sec. 89, Art. 7, of the Revised Statutes of 1874, relating to cities, etc., requires the passage of the annual appropropriation ordidance during the first quarter of each fiscal year, in which shall be appropriated such sum or sums of money as may be deemed necessary to defray all expenses and liabilities of the corporation, specifying the objects and purposes of each appropriation and the amount thereof. Sec. 64 requires such ordinance to be published within one month after its passage.

Sec. 111 authorizes the city council on or before the second Tuesday in *September* (August) in each year to ascertain the total amount of appropriations for all corporate purpose legally made, and by ordinance levy and assess such amount, etc. A certified copy of such ordinance to be filed with the county clerk.

The record of the ordinance levying taxes for 1875, fails to show that the yeas and nays were taken upon its passage, as requried by Sec. 41, R. S. p. 215. This disregard of the provision of the statute renders the assessment of city taxes in 1875 void: *Steckert* v. *City of East Saginaw*, 22 Mich. 104; *Spangler* v. *Jacoby* 14 Ill. 297; 1 Dillon's Municipal Corporations (3rd Ed.) 303.

The failure to pass the appropriation ordinances 1875 and 1876 is also fatal. The power to levy taxes was limited to the amount of appropriations legally made. The donor of the power should be held to a

strict execution of authority, because of the liability of the power to abuse: Cooley on Taxation, 212.

All statutes which expressly or by implication limit the amount of taxes which may be levied, are mandatory: Id. 295; *French* v. *Edwards*, 13 Wall. 507.

The statute declares that all ordinances involving an appropriation of money, shall be published. This makes it mandatory: Cooley on Taxation, 218.

These omissions are not formal and cured by Sec. 181 of the Revenued Act: *People* v. *Miller*, 74 Ill. 384; *Hamilton* v. *Fond Du Lac*, 25 Wis. 490; *Prindle* v. *Campbell*, 9 Minn. 212.

Mr. R. W. TOWNSEND, and Mr. T. M. ECKLEY, for the appellee.

The judgment of the County Court is conclusive as to all matters that could and ought to have been passed upon in rendering it. If it included too much taxes or illegal taxes, it was but an error to be taken advantagee of only by appeal or writ of error: *Keeve* v. *Kennely*, 43 Cal. 653; *Hahn* v. *Kelley*, 34 Id. 391; *Murdock* v. *De Vries*, 37 Id. 528; *Mayo* v. *Foley*, 40 Id. 283; Blackwell on Tax titles, 221; *Moore* v. *Wyman*, 107 Ill. 192 *Gage* v. *Parker*, 103 Id. 535; *People* v. *Brislin*, 80 Id. 423; *Lehmer* v. *People*, 80 Id. 601; *Prout* v. *People*, 83 Id. 154; *C. & N. W. Ry. C.* v. *People*, Id 463; *Andrews* v. *People*, Id. 529; *Schertz* v. *People*, 105 Id. 32; *Black* v. *People*, 109 Id. 504; *Ward* v. *Farwell*, 97 Id. 619; *Monroe* v. *People*, 102 Id. 409; *Fortman* v. *Ruggles*, 58 Ill. 208; *Mix* v. *People*, 106 Id. 425; *People* v. *Smith*, 94 Id. 226; *Chicago Theological Seminary* v. *Gage*, 12 Fed. Rep. 298.

The proof fails to show that the appropriation ordinances have not been passed, and it is not necessary that the book of ordinance should show the yeas and nays were taken.

It will be presumed that was done which ought to have been done, until the contrary is showen: *Lattin* v. *Smith*, Breese, 362.

But if no appropriation ordinance was passed, it could not affect the tax title. It does not go to the substantial justice of the tax, and the omission is cured by Sec. 191 of the Revenue Act: *Raley* v. *Guinn*, 76 Mo. 273; *Mills* v. *Gleason*, 11 Wis. 497.

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SUPREME COURT OF CALIFORNIA.

OPINION FILED MAY, 4, '85.

Department Two. No. 8,968.

Tyrrel v. *Baldwin et al.*

PARTIES—VOLUNTARY APPEARANCE OF DEFENDANT — JUDGMENT FINDING — PURCHASERS PENDENTE LITE— EFFECT OF JUDGMENT.—

Appeal from a judgment of the Superior Court of the city and county of San Francisco, entered in favor of the defendants and from an order denying the plaintiff a new trial. The opinion states the facts.

Wm. Royal, for the plaintiff.

B. S. Brooks, *A. L. Rhodes* and *Wm. Leviston*, for the respondents.

SHARPSTEIN, J.—The judgment in *McLeran* v. *McNamara* on its face purports to be a judgment against plaintiff's grantors, Sarah and Charles McDonald, and if they were parties to that action, such judgment was properly admitted in evidence in this case.

The McDonalds were not named in the complaint filed in *McLeran* v. *McNamara* nor does it appear that the summons in that action was served on either of them by any name, Nor was the complaint amended by inserting either of their names. No order of court granting either of them leave to appear in or defend the action, or to file an answer therein, is found in the record. But nearly seven months after the complaint was filed, and long before trial, they filed an answer, denying each and every allegation of the complaint, and alleging that they were the owners, and entitled to the possession of much of the demanded premises in that action, as their grantee, the plaintiff in this action, seeks to recover herein; and unless their voluntary appearance in *McLeran* v. *McNamara* gave the court jurisdiction of their persons, the judgment against them in

in that action is void for want of such jurisdiction.

In *McKinley* v. *Tuttle* 42 Cal. 570, the court said: "The question is whether a judgment can be sustained against persons who are not mentioned in the complaint," and reversed the judgment because it had been rendered against persons not so mentioned. In that case the attack was direct. In this, it is collateral, and if the judgement is not void it is not subject to a collateral attack.

A later case than *McKinley* v. *Tuttle* is *Campbell* v. *Adams*, 50 Cal. 203. The judgment, which was held to be valid as against a collateral attack, in that case was rendered against a person who was not named in the complaint. The summons, however, had been served on him by a fictitious name, as he stated in his answer. In that respect the case differed from *McKinley* v. *Tuttle*. But the difference is immaterial. The decision in *McKinley* v. *Tuttle* rests solely on the ground that the judgment had been rendered against a person who was *not mentioned in the complaint*, and for that reason, as the court held, not charged with ousting the plaintiff, or witholding the the possession from him.

The voluntary appearance of a defendant is equivalent to personal service of the summons and a copy of the complaint upon him. An apparance before being summoned confers jurisdiction equally with an appearance after being summoned. Under our practice a person who is not named in the complaint nor served with summons, if he has an interest in the matter in litigation, may become a party by obtaining leave of the court to file a complaint in intervention. Here the McDonalds, without objection or opposition filed an answer in which they denied all the allegations of the complaint and alleged that they were owners and entitled to the possession of a certain portion of the demanded premises. They were permitted to do without opposition, and by tacit consent, what they might have done by leave of the court. But why ask leave of the court to do that which nobody objected to their doing? They invoked the judgment of the court upon the issues raised by their answer to the complaint, and they got it. Can they now be heard to say that the judgment is a nullity, because they obtruded themselves into the action? Their answer showed that they might properly have been made parties to it. And the record shows that they availed themselves of all the rights and privileges of which they could have availed themselves if they had been named and sued as defendants in the complaint. As soon as the answer was filed the complaint might have been amended by adding the names of the McDonalds to those of the other defendants in the action. Did the failure to do so affect the substantial rights of the parties? Clearly not. And if not, the judgment is not affected by reason of that defect in the pleadings or procedings: C. C. P., 475.

The fact that Charles McDonald died after the answer was filed, and before the trial, does not, according to the weight of authority, render the judgment against him void as to those who purchased, *pendente lite*, his interest in the demanded premises. "That a judgment against a person dead at its rendition, is valid until reversed or set aside by some competent judicial authority, and that it can not be collaterally attacked, is established by a larger preponderance of the authorities than can be brought forward, to shield a judgment against a married woman from collateral assault and overthrow:" Freeman on Judgments, Sec. 153.

None of the cases in this State which seem to militate against this doctrine, involved this question. In none of them was it a question whether such a judgment could be collaterally attacked: *Ewald* v. *Corbett*, 32 Cal. 493; *Judson* v. *Lane* 35 Id. 469; *McCreery* v. *Everding*, 44 Id. 286.

And if the judgment in *McLeran* v. *McNamara* was admissible as evidence for the defendant, as we think it was, we are unable to discover any satisfactory ground on which

the ruling that the judgment in *Porter* v. *Woodward* was inadmissible as evidence for the plaintiff, can be sustained. These judgments were rendered in actions between the same parties, in respect to the same subject-matter, and the rule in such cases is, that the last judgment concludes. The argument of respondent's counsel on this point fails to convince us that this is not a case to which the rule applies. The evidence was clearly admissible in rebuttal. There was no occasion for introducing it until after the judgment in *McLeran* v. *McNamara* was admitted in evidence.

Judgment and order reversed.

THORNTON, J., and MYRICK, J., concurred.

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SUPR. COURT OF MASSACHUSETTS.

OPINION FILED MAY, 1885.

Jesse Tirrell v. *Knowles Freeman et al.*

Where a debtor has been adjudged a bankrupt and induces a creditor to sign his assent to his discharge by an oral promise to pay the debt in full and after obtaining his discharge, gives his promissory not for the amount of the debt. HELD that the written promise is tainted with the orginal fraud and will not be enforced.

This was an action to recover on five promissory notes made by the defendants and payable to the plaintiff. These notes were given in pursuance of an agreement made between the plaintiff and the defendants, by which the former agree to assent to a composition by which the latter obtained their discharge in bankruptcy. At the hearing of the çase in the Superior Court, the plaintiff demurred to the defendants' answer, and the demurrer was sustained and judgment ordered for the plaintiff. The defendants appealed. The essential facts appear in the opinion.

FIELD, J.—The plaintiff having proved his debt, signed the resolution of composition of the defendants, who were bankrupt debtors, under a petition filed on or about February 10, 1876, in consideration of an oral promise by the debtors that they would pay the plaintiff his debt in full, by giving him four promissory notes therefor and would pay a further sum in money. The resolution was confirmed by the signatures of the debtors, and the requisite number of creditors, including the plaintiff; and it was ordered to be recorded by the court, whereby the debtors were discharged from their debts. Subsequently, on December 1, 1876, the debtors gave the plaintiff a written agreement to give the notes, and "thereafter, to wit, on or about the first day of January, A. D. 1878, for the same consideration, gave the plaintiff, among other things, the five notes declared on in lieu of the four notes so agreed to be given aforesaid.". On October 17 1876, the defendant filed a second petition in bankruptcy, and were adjudged bankrupt debtors thereon and obtained their discharge; but the plaintiff, under this bankruptcy, did not prove his claim; nor was he "mentioned as a creditor in the schedules filed therein." It is conceded by the plaintiff that the oral promise was void, not only because it was not in writing, but also because it was illegal and made in fraud of creditors and the laws relating to bankruptcy: G. S. *c.* 105. § 3; P. S. *c.* 78, § 3; U. S. R. S., § 5131; *Blodel* v. *Fowle*, 120 Mass. 447; *Dexter* v. *Snow*, 12 Cush. 594. See *Cobb* v. *Tirrell*, 537 Mass.

The contention of the plaintiff seems to be that, as there was no new promise sufficient in form to revive the old debt before the written agreement of December 1, 1876, which was after the second bankruptcy, that agreement must be regarded as voluntarily given; that the old debt, although discharged in bankruptcy, was a sufficient condideration; that the effect of the composition in the first bankruptcy can not be impeached in this suit: *Farwell* v. *Raddin*, 129 Mass. 71; that the plantiff was not a creditor under the second bankrnptcy, as the debts dercharged by the first bankrnptcy were not provable under the second. We are unable to see that the second bankruptcy has anything to do with the case. The plaintiff did not aid the defendants to obtain a discharge in the second bankruptcy and the agreement was not given in consideration of anything done or for the pur-

pose affecting any proceedings in the second bankruptcy. If the composition on the first bankruptcy had been seasonably set aside and the debtors had not obtained their discharge therein, creditors under the first bankruptcy could have proved the remainder of their debts under the second bankruptcy; but the composition has not been set aside, and it may, perhaps, be assumed that the the defendants have been affectually discharged of their debts under both proceedings in bankruptcy. It can not, however, be assumed that the defendants would have obtained their discharge in the second bankruptcy if they had not also obtained it in the first; and the proceding in the first bankruptcy can not be treated as of no effect or as immaterial.

The defendants could not have been compelled to give a written promise in accordance with their oral promise; but they have voluntarily done it, and the question comes to this, whether, if a bankrupt debtor orally promises to pay a creditor's debt in full if the creditors will sign an assent to his discharge, and enable him to obtain it, and the debtor after having thus obtained his discharge, in execution of his oral promise, gives a written promise to pay the debt, the written promise is tainted with the orginal fraud. Of this we have no doubt. The purpose is to carry the orginal fraudulent agreement into effect: *Blodel* v. *Fowle*, *supra*.

The judgment must be reversed and the demurrer overruled.

So ordered.

John Lowell, *Geo. W. Morse* and *Jas. H. Flint*, for the plaintiff.

Boardman & Tyng, for the defendants.

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IT is said that a lady recently asked the chief justice of a State Court if they were not going to put on gowns. He said yes. "But when?" she asked, "At night," was the reply.

SUPREME COURT OF THE UNITED STATES.

No. 905.—OCTOBER TERM, 1884.

P. T. Moore, Plaintiff in Error v. *Samuel C. Greenhow, Treasurer of the City of Richmond.*

In error to the Supreme Court of Appeals of the State of Virginia.

MANDAMUS—LICENSE TAX—VIRGINIA COUPONS.

[May 4, 1885.]

Mr. Justice MATTHEWS, delivered the opinion of the court.

The plaintiff in error filed his petition on April 26, 1884, in the Circuit Court of the city of Richmond, against Greenhow, the defendant, as treasurer of the city of Richmond, praying for a rule of *nisi*, commanding the said Greenhow to show cause why a peremptory *mandamus* should not be awarded to the plaintiff, commanding the said treasurer to issue to the petitioner a certificate in writing stating that he had made the deposit required by law in payment of his license tax, as a sample merchant in said city. The petition set forth that the tender made in payment of his deposit consisted of coupons cut from bonds issued by the State of Virginia, and by contract with the State therein declared receivable in payment of all taxes, debts, demands and dues to the State, and the tender was refused by the treasurer, and a certificate of deposit withheld, because the 112th section of an act of the General Assembly of Virginia, approved March 15, 1884, for the purpose of assessing taxes on persons, property and incomes and licenses, requires that all license taxes shall be paid in gold or silver coin, United States treasury notes, or national bank notes, and not in cupons, and another act of the General Assembly of the State, approved March 7, 1884, to regulate the granting of licenses, likewise forbids the payment of license taxes in coupons.

The alternative writ prayed for was denied by the Circuit Court of the city of Richmond, and, on a petition for a writ of error, its judgment dismissing the petition therefor

was affirmed hy the Supreme Court of Appeals of the State.

This being a case in which, by *mandamus*, the plaintiff in error seeks to compel the officers of the State of Virginia specifically to receive coupons instead of money in payment of license taxes, it comes within the exact terms of the decision of a majority of this court in *Antoni* v. *Greenhow*, 107 U. S. 769, according to which the plaintiff in error is remitted to the remedy provided by the act of January 14, 1882, entitled "An act to prevent frauds upon the Commonwealth and the holders of her securities in collection and disbursement of revenues."

The judgment of the Supreme Court of Appeals of Virginia is, therefore.

Affirmed.

Mr. Justice FIELD and Mr. Justice HARLAN adhere to the views expressed in their dissenting opinions in *Antoni* v. *Greenhow*, but they agree that the principles announced by the majorlty in that case, if applied to the present case, required an affirmance of the judgment below.

———o———

UNITED STATES CIRCUIT COURT DISTICT OF OREGON.

Allen v. *O'Donald.*

FILED MAY, 8, 1885.

LIEN BY MORTGAGE—CREDITOR HAVING A LIEN IS BOUND TO USE DILLIGENCE TO ENFORCE IT AND FAILING TO DO SO THE SURETY IS DISCHARGED.

DEADY, J.—On November 1, 1871, Thomas Cross, of Salem, Oregon, gave his promissory note to the firm of Allen & Lewis, of Portland, Oregon, for the sum of $30,000, payable in three years from date, with interest at 10 per cent. per annum, payable semi-annually; and to secure the payment of the same he and his wife, Pluma F., on the same day executed and delivered to said firm a mortgage on fifteen parcels of land situated in Marion county, and containing in the aggregate obout 3,390 acres; and on January 23, 1872, said Thomas Cross gave his promissory note to said firm for the sum of $10,010, payable in one year from date with interest at 1 per cent. per month and to secure the payment of the same, he and said Pluma F., on the same day, executed and delivered to said firm a second mortgage on the real property aforesaid, together with the south half of block 30 in Salem, and certain parts of lots 1, 2 and 3, in block 20, in said town.

On September 16, 1872, said Pluma F., died.

On January 22, 1876, said nots being still unpaid, said Thomas Cross, and C. M. Cross his then wife, executed and delivered to C. H. Lewis, a member of said firm, a conveyance, absolute on its face, of all said property subject to said mortgages but upon the understanding and trust that said Lewis would farm and manage the same, and apply the rents and profits therof upon the debts secured thereon, and that he might, with the consent of said Thomas Cross, sell and dispose of the whole or any portion of the same and apply the proceeds in like manner.

On February 5, 1884, Thomas Cross died, soon after which the notes and mortgages aforesaid were indorsed and assigned by said firm to L. H. Allen of San Francisco, a member thereof.

On August 6, 1884, said Allen brought suit in this court to enforce the lien of said mortgages, alleging that there was then due on the first of said notes $45,137.04, with interest at 10 per cent. per annum from December 22, 1881, and on the second $10,000, with interest from January 25, 1879, less $1,686.35 paid thereon.

Sundry persons being the administrators and heirs of Thomas Cross and E. C. Cross, Frank R. Cross and P. May Wilson, the children and heirs of Pluma F. Cross and C. H. Lewis are made parties defendants to the bill.

On January 20, 1885, an order was made taking the bill for confessed as gainst all the defendants exept E. C. Cross and Frank R Cross; and on March 10, 1885, they

answered the bill, the latter by the former as his guardian.

The answer admits the making of the notes and mortgages and amounts due on them as alleged in the bill, except the amount due on the first note, which is stated at $45,137.04, with intrest on $30,000 since December 22, 1881, instead of on the larger sum. It also admits the execution of the deed on January 22, 1875, to C. H. Lewis, but denies that it was made on any trust or understanding as alleged in the bill.

The answer then states that at and before the execution of the two mortgages, and until her death, Pluma F. was the owner in fee simple of the two parcels of real property described therein as a portion of the donation of Daniel Leslie, contaning 80 acres, and the donation of F. S. Hoyt and wife, containing 131 acres, and otherwise designated in the bill as parcels 14 and 15; that prior to the execution of said mortgages, Thomas Cross was indebted to the firm of Allen & Lewis for money theretofore advanced to him in the sum of $30,000, which he was anable to pay, and to secure the payment of which said notes and mortgages were given; that at the urgent solication of her husband and the attorney of said firm, she was induced to join in said mortgage and thus "interpose her said land as security only for said debt of her said husband."

Then follow certain allegations which are excepted to by the plaintiff as impertinent. Briefly they are as follows:

(1) That it was stipulated in said mortgages that in default of payment of the notes, they should be foreclosed as provided by law, and no other or different mode of sale of said lands was provided therein or contemplated by the parties thereto.

(2) That after the death of said Pluma F. Cross, and in November, 1876, said Thomas Cross entered into an agreement with Allen & Lewis, in pursuance of which they sold and conveyed sundry portions of said mortgeges, as follows: To J. I. Thompson, 413.06 acres for $3,834; to C. C. Kennedy, 160.02 acres, for $1,680.20; to S. R. Scott, 309.36 acres, for $3,080; in all 882.44 acres for $8,594.20, which land was then worth and would have sold under ordinary circumstances for $20,000; that in making said sale said parties expended $1,500 in surveys, commissions and agents, and wrongfully charged the same to the procedes of said sales; that no part of said proceeds were ever credited on said notes or mortgages and that said sales were made without the consent of the defendants.

(3) That the said lands of Pluma F. Cross were, at the time said sales, and now are, worth not more than $10,000, and the premises considered the same ought to be released and discharged from the operation and effect of said mortgages.

It appearing from the allegations thus excepted to, that the creditors, Allen & Lewis, voluntarily disposed of a portion of the debtor's property, on which they had a lien for their debt at a loss or sacrifice of not less than $10,000, a sum equal to the value of property which the defendant's mother mortgaged as a security for said debt, they claim that the same is discharged from the operation of the mortgage and that therefore such allegation constitutes, as to them, a good defene to the bill.

The argument in suport of the exceptions is, that admitting the sale of a portion of the debtor's property at a loss, the conclu sion that the propery of the surety is therefore released from the effect of the mortgage does not follow, because all the property included in the mortgage is not sufficient to satisfy the debt by more than 10,000, and therefore it can make no difference to these defendants whether such sum was lost by this disposition of the debtor's property or not. They are not injured in any view of the case, because after making due allowance for this loss their property will still be required to satisfy the debt.

It is admitted that Mrs. Cross was only a surety in this transaction for the debt of her husband, and it is not disputed that if the creditors relinquished their lien on any portion of the debtor's property included in

the mortgage, without reducing the debt in an amount equal to the value thereof, that the property of the surety is so far discharged from the lien thereof.

This rule is the result of equitable principles inherent in the relation of principal and surety, which require that the property of the former pledged to the creditor for the payment of his debt, shall, for the benefit of the latter, be applied to that purpose. A creditor with such a lien, is so far a trustee for all parties concerned and must not deprive anyone of the benefit of it. Upon paying the debt the surety is subrogated to the rights of the creditor in this respect; but if in the meantime the latter has done anything to impair the value of such right, the former is so far discharged from his liability: Brandt on Suretyship, § 370; Neff's Appeal, 9 W. & S., 43; *American Bank* v. *Baker*, 4 Met. 177; *Cummings* v. *Little*, 45 Maine, 187; *Hayes* v. *Ward*, 4 John. Ch. 129; *Baker* v. *Briggs*, 8 8 Met. 129.

In *Hayes* v. *Ward*, *supra*, Chancellor Kent says: "The surety, by his very character and relation as surety, has an interest that the mortgage taken from the principal debtor should be dealt with in good faith, and held in trust, not only for the creditor's security but for the surety's indemnity. A mortgage so taken by the creditor is taken and held in trust, as well for the secondary interest of the surety, as for the more direct and immediate benefit of the creditor; and the latter must do no willful act, either to poison it, in the first instance or to destroy or cancel it afterward."

But it is not stated either in the bill or answer what is the value of the portion of the debtors properly still covered by the mortgage, and therefore it does not appear whether or not the whole of it was sufficient, if disposed of at a fair value, to satisfy his debt, without recourse upon the surety property.

In round numbers there is now due on these notes not less than $80,000. In the argument for the exceptions it is claimed that the whole property included in the mortgage is not sufficient to pay the debt by a much larger sum than the alleged value of the defendant's property. And if this is so, then the defendants are not injured by what they complain of, and the allegations excepted would be no defense to the bill and be clearly impertinent. But the court can not say judicially what this 3,390 acres of land is worth. It can not assume that it is only worth $70,000 and not $80,000, though it may not fetch either sums when put up at auction.

The rule seems to be that the burden of proof is on the creditor in a case of this kind, to show that the surety has not been injured by the transaction: Brandt on Suretyship, § 370.

It follows that the allegations excepted to are not impertinent, but constitute a good defense to the relief prayed for as to these defendants. The plaintiff must either deny them by a replication, or confess and avoid them by proper amendments to this bill.

The further point made in support of the third exception, that the matter excepted is a mere conclusion af law, is not well taken. It is somtimes proper and convenient in equity pleading, as a means of indicating the relief to which the party considers himself entitled or the defense sought to be made, to make deductions from the facts stated, that are more or less conclusions of law. And this seems to be the character of this allegation.

The exeptions are disallowed.

Mr. M. W. Fechheimer, for the plaintiff.

Mr. William H. Holmes, for the defendants

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2. Coke, Van Maurer, Phillips, Selden, Spelman and Turner regard it as having been orginal with the Anglo-Saxons.

3. Bacon, Blackstone, Montesquieu, Nicholson and Savigny hold that it was imported from primitive Germany.

4. Konrad Mauer thinks it is of North German origin.

5. Warmius and Warsaae agree that it was derived from the Norsemen, through the Danes.

6. Hicks and Reese think it came from the Norsemen, through the Norman conquest.

7. Daniel says the Normans found it existing in France, and adopted it.

8. Mohl thinks it derived from the usages of the Canon law.

9. Meyer thinks it came from Asia by way of the Crusades.

10. Maciejowski says it was derived from the Slavonic neighbors of the Angless and Saxons.

11. Brunner, Palgrave and Stubbs derive it from the Theodosian Code, through the Frank Capitularies.

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Groton, see Aberdeen.
Halabird see Highmore.
Harold see Blunt.
Harrold See Pierre.
Hartford, See Sioux Falls.
Henry, See Clark.
Highmore, L. E. Whitcher.
Howard, D. D. Holdridge.
Hudson, see Ellendale.
Hunter, see Casselton.
Hurley, See Parker.
Huron, Geo. W. Sterling.
Ipswich. Alfred Joubert.
Iroquois, see De Smet.
Keystone, see Ellendale.
Kimball, Gabe E. Schwindt.
Lake Preston, see De Smet.
Larimore, see Grand Forks.
Le Beau, See Ipswich.
La Moure, N. B. Wilkinson.
Lennox, see Canton.
Lead City, see Deadwood.
Leonard, see Casselton.
Letcher, See Mitchell.
Lisbon see Milnor.
Madison, see Howard
Manchester, see De Smet.
Mandan, see Bismark.
Marion Jct., See Parker.
Mapleton, see Casselton.
Menoken see Bismark.
Minto, see Gratton.
Mitchell, Dillon & Preston.
Milnor, Bishop & Babcock.
Montrose, M. A. Butterfield.
Moorhead, Minn., see Fargo.
Mt. Vernon, See Mitchell.
Okobojo, see Pierre.
Onida see Blunt.
Ordway, see Aberdeen.
Oriska, see Valley City.
Parker, E. C. Kennedy.
Pierre, B. F. Hood.
Plankinton, T. N. Treat.
Port Emma, see Ellendale
Puckwana, see Kimball.
Rapid City, John W. Nowlin
Roscoe, See Ipswich.
Roswell, see Howard.
Raymond, See Clark.
Ripon, see Fargo.
Running Water, } See Springfield.
Salem, See Montrose.
Sanborn, see Valley City.
Scotland, See Springfield.
Sioux Falls, } E. A. Coughran. T. B. McMartin.
Springfield, W. T. Williams.
Steele see Bismark.
Sturgis City, see Deadwood.
Toronto, see Gary.
Tower City, see Casselton.
Tyndall, See Springfield.
Valley City, Geo. R. Andrus.
Valley Springs, } See Sioux Falls.
Vermillion. See Elk Point.
Vilas, see Howard.
Volga, see Brookings.
Wahpeton, Pyatt & Purcell.
Walcott, See Wahpeton.
Warner, see Aberdeen.
Washburn, see Bismark.
Watertown, } D. C. & W. R Thomas.
Willow Lake, see De Smet.
Worthing, see Canton.
Wessington, see Altoona.
Wessington, see Huron.
Westport, see Aberdeen.
Wheatland, see Casselton.
White, see Brookings.
White Lake, See Plankinton.
Will amsport, see Bismark
Wilmot, see Milbank.
Wolsey, see Huron.
Yankton, S. H. Gruber.
Yorktown see La Moure.

DELAWARE.

Wilmington and any town in the State, } S. A. MACALLISTER

DISTRICT OF COLUMBIA.

Washington.
FRED W. JONES.

Any one writing to parties in this list should mention The Chicago Law Journal.

FLORIDA.

Apopka, see Sanford.
Bartow, see Sanford.
Cedar Keys. See Gainsville.
Enterprise, see Sanford.
Eustis, see Sanford.
Gainsville, Jno. T. & Geo. U. Walker.
Jacksonville. M. C. Jordan
Kissimmee, see Sanford.
Lake City, See Gainsville.
Milton, See Pensacola.
Ocala, See Gainsville.
Orlando, see Sanford.
Palatka, See Gainsville.
Sanford. Thos. E. Wilson.
Titusville, see Sanford.
Warrington, See Pensacola.

GEORGIA.

Adairsville, see Cartersvilles.
Acworth. see Cartersville.
Alpharetta, see Marietta.
Appling, See Augusta.
Arlington. See Morgan.
Athens. Alx. S. Erwin.
Atlanta, E. A. ASGIER.
Augusta. T. & J. L. Oakman.
Barnesville, see Griffin.
Brunswick, A J. Crovatt.
Butleee Columbus.
Canton, see Marietta.
Carrollton. See Newman.
Cartersville A. M. Foute.
Cavensville. see Athens
Cedartown, See Rome.
Centre. See Rome.
Clinton, See Macon.
Columbus. Wm. A. Little.
Dalton. see Marietta.
Fort Valley. see Macon.
Franklin, See Newman.
Greenville, See Newman.
Griffin. Hall & Hunt.
Hamilton, see Columbus.
Hampton, see Griffin.
Harlem. See Augusta.
Hawkinsville. See Augusta.
Jasper, see Marietta.
Jefferson, see Athens
Jeffersonville, see Macon.
Jonesboro, see Griffin.
Kingston, see Cartersville.
Knoxville, see Macon.
LaFayette, see Rome.
Lenry. See Morgan.
Lumpkin see Columbus.
Macon } Lanier & Anderson. } Robert S. Lanier. } Clifford Anderson.
Marietta. Will J. Winn.
McDonough, see Griffin.
Minnie, see Alabama.
Monroe, see Athens.
Monticello, See Macon.
Morgan, J. J. Beck.
Newton, See Morgan.
Newman. O. McCendon.
Perry, See Macon.
Rome, Hamilton Yancey.
Savannah. H. C. Cunningham
Springfield. See Savannah.
Statesborough, See Savannah
Stillboro. see Cartersville
Talbotton. see Columbus.
Summerville. See Rome.
Thompson. See Augusta.
Watkinsville see Athens.
Waynsboro, See Augusta.

IDAHO.

Caldwell, Charles H. Reed.
Boise City, Jonas W. Brown.
Bellevue, see Hailey.
Bullion, see Hailey.
Hailey, Kingsbury & McGowan.
Ketchum, see Hailey.
Shoshone, see Hailey.

ILLINOIS.

Aledo. John C. Pepper.
Altamont. see Effingham,
Alton, see Edwardsville.
Alxis see Monmouth.
Amboy. Wm. E. Ives & Son.
Apple River, see Galena.
Arcadia, see Jacksonville.
Armstrong see Danville.
Arcola. see Tuscola.
Arthur, See Sullivan.
Ashley, See Nashville.
Ashton. See Dixon.
Astoria see Canton.
Atlanta, see Lincoln.
Atwood see Tuscola.
Aurora see Elgin.
Barnett, See Litchfield.
Barry, see Pittsfield
Batavia, see Elgin.
Baylis, See Pittsfield
Beason, see Lincoln.
Belvidere. C. B. Dean.
Bement, see Monticello.
Benson see Metamora.
Benton, F. M. Youngblood.
Bismark see Danville.
Brimfield, See Peoria.
Bethany, See Sullivan.
Bloomington. } Wm. Hayes Beaver
Bradford. See Toulon.
Brewick, see Monmouth.
Brighton, See Carlinville.
Brushy Fork, see Tuscola.
Buckley, See Watseka
Bunker Hill, See Carlinville.
Bushnell. } A. E. Barnes. } G. S. Doughty.
Butler, See Litchfield
Cable, See Aledo.
Cairo. George Fisher.
Calery see Paxton.
Camargo, see Tuscola.
Cameron see Monmouth.
Cambridge, See Geneseo
Campbell, See Murphysboro.
Camp Point, See Quincy.
Canton, Chas. J. Main.
Carlinville. Thomas Rinaker.
Carthage, see Nauvo.
Castleton. See Toulon.
Catlin, See Danville.
Caledonia Sta, see Belvidere
Capron, see Belvidere
Castleton, see Toulon
Cerro Gordo, see Monticello.
Champaign, Thos. J. Smith.
Chapin. see Jacksonville.
Chatsworth, see Pontiac.
Chebanse. See Watseka.
Chenoa, See Bloomington.
Chillicothe, See Peoria.
Christopher, See Benton.
Colfax. See Bloomington.

CHICAGO, 164 LA SALLE ST.
JONES&WACHOB

Christman, see Paris.
Cisco, see Monticello.
Clarence see Paxton.
Clay City, E. McGilton.
Clayton, See Quincy.
Coleta, See Sterling.
Collinsville, see Edwardsville.
Como. See Sterling.
Corne l, See Pontiac.
Cowden, See Shelbyville.
Cortland, ee Sycamore
Cuba see Canton.
Cullom, See Pontiac.
Dalo.City, See Sullivan.
Danbers, see Bloomington.
Danville R. B. Smith.
Decatur. I. A. Buckingham
Deer Grove, See terling.
De Land. fee Monticello.
DeKalb, see Sycamore
Dixon, A. K. Trusdell.
Dundee, see Elgin,
Durand, See Rockford.
Dwight, See Pontiac.
East Dubuque, see Galena,
Edinburg, see Taylorville.
Edwardsville, } Happy & Travous.
Essah, see Jerseyville
Elah, See Jerseyville.
Eldena, See Dixon
Elgin. Edward C. Lovell.
Elliot see Paxton.
Elkhart, see Lincoln.
Ellisville see Canton.
Elmwood, See Peoria.
El Paso, see Metamora.
Equality, See Shawneetown.
Ewing, See Benton.
Empire, See Sterling.
Erie See Sterling.
Fairbury, See Pontiac.
Fairmount, See Danville.
Fairview see Canton.
Farmer City, see Clinton.
Farmington see Canton.
Fieldon, See Jerseyville.
Fithian see Danville.
Forreston, see Polo.
Fidelity, see Jerseyville.
Fiedon, see Jerseyville
Flanagan, See Pontiac.
Flat Rock. See Robinson
Forest, See Pontiac.
Fowler, See Quiney.
Franklin, See Dixon.
Fulton, See Sterling.
Galt, See Sterling.
Galesburg, E. H. Leach.
Galesville, see Monticello.
Galena, Jacob Fawcet.
Cameron, see Monmouth.
Garden Prairie, see Belvidere
Geneseo, Charles Dunham.
Geneva, see Elgin.
Gibson see Paxton.
Grafton, See Jerseyville.
Grafton, see Jerseyville
Grand Tower, } See Murphysboro
Grandview, see Paris
Grant Park, see Kankakee.
Grayville, see Carmi.
Griggsville. see Pittsfield
Greenup, see Toledo.
Guthrie see Paxton.
Hammond, see Monticello.
Hampshire, see Elgin.
Hardinsville, See Robinson.
Harrisburg, See Benton.
Hartsburg, see Lincoln.
Harvel, see Litchfield.
Havana, E. A. Wallace.
Heyworth, See Bloomington.
Highland, see Edwardsville.
Highland Park, see Waukegan
Hillsboro. seeLitchfield.
Hinckley, see Sycamore
Hindsbor, see Tuscola.
Homer, See Danville.
Honey Bend, See Litchffeld.
Hoopston. See Danville.
Hume. see Paris
Huntley see Elgin.
Hutsonville. See Robinson.
Indiano'a see Danville.
Ipava see Canton.
Jacksonville, E. G. Wilson.
Jerseyville, Warren & Pogue.
Jonesboro. See Anna.
Joy, See Aledo.
Kankakee, Daniel H. Paddock. (Master in Chancery)
Kansas, see Paris
Keithsburg, See Aledo.
Kempton see Paxton.
Kirkwood, see Monmouth.
Knderhook, see Pittsfield
LaFayette. See Toulon.
Lake Forest, see Waukegan.
Lanark, see Mount Carroll.
La Salle, see Ottawa.
Lawrenceville, see Robinson
Lawrenceville see Vincennes Ind.
Leaf River, see Polo.
Lewiston see Canton.
Lexington, See Bloomington
Leroy, See Bloomington.
Lincoln, C. I. Forsyth.
Litchfield, Robt. McWilliams
Little York, see Monmouth.
Lovington, See Sullivan.
Lyndon, See Sterling.
McLean, See Bloomington.
Mackville, see Monticello.
Mansfield, see Monticello.
Manteno, see Kankakee.
Marseilles, see Ottawa.
Marysville see Danville.
MaKonda, See Murphysboro.
Malden, see Princeton
Melom see Paxton.
Mendon, See Quincy.
Meredosia, see Jacksonville.
Metamora, Albert R. Rich.
Milan, see Rock Island.
Millersburg, See Aledo.
Minonk, see Metamora.
Moawaqua, see Shelbyville
Moline, see Rock Island.
Milton, see Pittsfield.
Monmouth, L. H. Bristol.
Momence, see Kankakee.
Morrison See Sterling.
Morrsonville, see Taylorville
Mound City, See Cairo.
Monticello, } David McWilliams.
Mt. Carmel, see Vincennes Ind
Mt. Morris, see Polo.
Mt. Sterling, see Rushville.
Mt. Vernon. Pollock & Sons.
Mount Carroll, Mackay Bros.
Mount Pulaski, see Lincoln.
Mulkeytown, See Benton.
Mnncie, see Danville.
Murrayville, see Jacksonville
Murdock, see Tuscola
Murphysboro, } Geo. W. Hill. } J. H. Martin.
Nauvoo and all towns in Hancock Co } Geo. A. Ritter.
Neoga, see Toledo.
Newman, see Tuscola.
Newmansville, see Virginia.
New Boston, See Aledo
New Haven. See Shawneetown
Newton, See Robinson.
New Windsor, See Aledo.
New Canton, see Pittsfield
New Salem, seePittsfield
Newbern, see Jerseyville
Nebo, see Pittsfield
Normal, See Bloomington
North Henderson, See Aledo.
Norwood, See Aledo.
Oakland, see Tuscola.
Oakville, See Nashville.
Oakwood see Danville.
Oconee, see Shelbyville
Oblong, See Robinson.
Omaha, See Shawneetown.
Odell, See Pontiac.
Onarga, See Watseka.
Oregon see Polo.
Otterville, See Jerseyville
Ottawa, Blanchard & Blanchard.
Otterville, see Jerseyville
Owaneco, see Taylorville.
Palmer, see Taylorville.
Pana, see Taylorville.
Paxton, John H. Moffett
Paris, Jos. C. Ficklin
Palestine, See Robinson.
Parish, See Benton,

Peoria. NICHOLAS ULRICH.

Princeville, See Peoria.
Pecatonica, See Rockford.
Perry, see Pittsfield
Piper City see Paxton.
Pittsfield, Orr & Crawford
Polo, John D. Campbell.
Pomona, See Murphysboro.
Pontiac. C. C. Strawn.
Poplar Grove, see Belvidere
Prophetstown, see Sterling.
Princeton, W. A. Johnson
Quincy, W. W. Berry.
Rankin, See Danville.
Raymond, See Litchfield.
Ridge Farm, See Danville.
Ridgeway, see Shawneetown
Robinson, Robb & Bradberry.
Roberts See Paxton.
Rochelle, see Polo.
Roanoak, see Metamora.
Rock Falls, See Sterling.
Rockton, See Rockford.
Rock Island. } M. M. Sturgeon
Rockford, C. M. Brazee.
Round Grove, See Sterling.
Rossville, See Danville.
Roseville, se Monmouth.
Rockport. see Pittsfield
Rushville, and all towns in Schuyler Co. } J. C. Bagby.
Sandwich, see Sycamore
Saybrook, See Bloomington.
Savanna, see Mount Carroll.
Shannon, see Mount Carroll
Scotland, see Paris
Shawneetown, Bowman & Pillow.
Sheldon, See Watseka.
Shelbyville, Moulton, Chafee & Headen.
Shumway, see Effingham.
Sigel, see Shelbyville
Smithfield see Canton.
Somanauk, see Sycamore
South Elgin, see Elgin.
Springfield, Geo. A. Sanders.
Spring Garden, See Benton.
St Anne, see Kankakee
St. Charles, see Elgin.
St. Jacob's, see Edwardsvill.
Staunton, See Carlinville.
Sterling, J. & J. Dinsmoor.
Stewardson, See Shelbyville.
Strawn, See Pontiac.
Streator, see Ottawa.
Stork, see Toulon
Stanford, See Bloomington.
Sullivan, A. C. Mouser.
Sublette, See Dixon.
Summit, See Sullivan.
Sunbeam, See Aledo.
Sycamore, Jones & Bishop
Table Grove see Canton.
Taylorville, J. C. McBride.
Thompson, see Mount Carroll
Thompsonville, See Benton.
Tiskilwa, seePrinceton
Tonon, J. H. Miller.
Tower Hill, see Shelbyville
Urbana, Thomas J. Smith.
Vermillion, see Paris
Vermont see Canton.
Viola, See Aledo,

Waldron, see Kankakee.
Warren, see Galena.
Warsaw, see Nauvoo.
Washburn, see Metamora.
Watseka, Kay & Evans.
Walshville, See Litchfield.
Waterman, see Sycamore.
Waukegan and all towns in Lake Co. | Norman A. Lough
Waverly, see Jacksonville.
Wellsville see Danville.
Woodson, see Jacksonville
West Jersey, see Toulon
White Heath, see Mont cello.
Windsor, See Shelbyville.
Wilmington, J. W. Merrell.
Wyoming, John E. Decker.

INDIANA.

Adams, see Greensburg.
Adaville, See Monticello.
Alamo, see Crawfordsville.
Albany, see Muncie.
Alexandria, See Anderson.
Ambia, see Fowler.
Anderson, | Marcellus A. Chipman.
Angola, Emmett A. Bratton.
Arthur, see Petersburg.
Augusta, see Petersburg.
Aurora see Harrison, Ohio.
Argos, see Plymouth.
Arlington, See Rushville.
Barnettsville, See Monticello
Batesville, see Greensburg.
Barbers' Mills, see Bluffton
Battle Ground, see LaFayette
Bedford, Robert N. Palmer.
Berne, See Geneva.
Bluffton, | Wilson, Todd & Duglay.
Bloomington, John Graham.
Boonville, see Evansville,
Bowling Green, see Brazil.
Brazil, McGregor & Compton.
Boswell, see Fowler.
Bourbon, see Plymouth.
Boyleston, see Frankfort.
Bremen, see Plymouth.
Bicknell, see Vincennes.
Bristol, See Elkhart.
Brookston, See Monticello.
Brownsburg, See Danville.
Brookville see HarrisonOhio.
Brooklyn, see Martinsville
Buceville, see Vincennes,
Brunswick, See Crown Point
Bryansville see Bedford.
Bryant, See Geneva.
Buel City, See Sullivan.
Burlington, see Kokomo.
Butler O. L. Young.
Cadiz, see New Castle.
Camden, See Portland.
Carbon, see Brazil.
Chrisney, see Rockport.
Clay City, see Brazil.
Carlisle, See Sullivan.
Carthage, See Rushville.
Churubusco, see Col. City.
Clarksburg, see Greensburg.
Clinton, see Newport.
Cloverdale, see Greencastle.
Coatesville, See Danville.
Coesse, see Columbia City.
Columbus, Charles S. Baker.
Colfax, see Frankfort.
Columbia City, Marshall & McNagny.
Connersville see Harrison, Ohio.
Crawfordsville, L. J. Coppage
Creston, See Crown Point
Crown Point, Griffin & Son.
Dana, see Newport.
Danville, M. W. Hopkins.
Darlington, | see Crawfordsville.
Dayton, see LaFayett
Decatur, Peterson & Huffman
Delphi, John C. Odell.
Dugger, See Sullivan.
Dunkirk, See Portland.
Duer, See Crown Point.
Earl Park, see Fowler.
Eaton, see Muncie.
Edwardsport, see Vincennes
Elkhart, | Orville T. Chamberlain.
Elwood, See Anderson,
Ellettsville see Bloomington.
Edinburg, see Columbus.
Eminence, see Martinsville.

Evansville,
CHAS. L. WEDDING.

Eugene, see Newport,
Fairbanks, See Sullivan
Falmouth, See Rushville.
Farmland, See Winchester.
Farmersburg, See Sullivan.
Fayettesville see Bedford.
Filmore, see Greencastle.
Fort Wayne, | James. M. Robinon.
Fowler, Geo. Wadsworh.
Francesville, see Knox.
Frankfort, Joseph C. Suit,
Frankton, See Anderson.
Frelandsville, see Vincennes.
Fremont, see Angola.
French Lick, see Paoli.
Galveston, see Logansport.
Geneva, Tharp & Drew.
Gessie, see Newport.
Glenwood, See Rushville.
Goshen, see Elkhart.
Grandview, see Rockport.
Graysville, See Sullivan.
Greencastle, Geo. Hathaway.
Greensboro, see New Castle
Greensburg, David A. Myers.
Grovertown, see Knox.
Guthrie see Bedford.
Hamilton see Angola.
Hamlet, see Knox.
Harrodsburg seeBloomington
Huntingsburg, see Rockport
Hammond, See Crown Point
Hardinsburg, see Paoli.
Hebron, see Valparaiso.
Heesville, See Crown Point.
Hiltonsville see Bedford.
Hobart, See Crown Point.
Homertown, see Petersburg.
Hope, see Columbus.
Huron see Bedford.
Huron, see Paoli.

Indianapolis, W. A. FOSTER.

Inwood, see Plymouth.
Jamestown, see Danville.
Jasper, see Rockport.
Keystone, See Bluffton.
Kingsland, See Bluffton.
Kirklin, see Frankfort.
Knightstown, see New Castle.
Knox, G. Arthur Murphy
Kouts, see Valparaiso.
Larwill, see Columbia City
Ladoga, see Crawfordsville.
La Porte, Weir & Weir.
Lawrenceburg see Harrison, Ohio.
Lebanon, see Danville.
Leltoy, See Crown Point.
Leesville see Bedford.
Liberty Centre, See Bluffton.
Linden, see Crawfordsville.
Linn Grove, See. Geneva.
Lizton, see Danville.
Logansport, W. S. Wright.
Lowell, See Crown Point.
Lynn, See Winchester.
Mace, see Crawfordsville.
Manilla, See Rushville.
Marlboro, See Rensselaer.
Martinsville, Adams & Newby
Medarysville, see Knox.
Merom, See Sullivan.
Merrillville, See Crown Point
Michigan City, See LaPorte.
Michigantown, see Frankfort.
Middleburg, see Elkhart.
Middletown, see New Castle.
Millhousen, see Greensburg.
Milroy, See Rushville.
Mishawaka, see South Bend.
Mitchell see Bedford.
Mitchell, see Paoli.
Monon, See Monticello.
Monroe City, see Vincennes.
Monticello, | Reynolds & Sellers.
Mooresville, See Martinsville
Morgantown, See Martinsville
Morris, see Greensburg.
Monrovia, see Martinsville.
Montgomery, see LaFayette
Mount Etna, see Huntington.
Mt. Vernon, See Evansville.
Muncie, | Walterhouse. & White
New Albany see Jeffersonville,
New Castle, Joseph M. Brown.
New Carlisle, see South Bend
New Corydon, See Geneva.
New Lebanon, See Sullivan.
New Market, see Crawf'd'vill
New Paris, see Elkhart.
New Point, see Greensburg.
Newport H. H. Conley.
New Ross, see Crawfordsville
Noblesville, See Anderson,
North Salem, See Danville.
North Judson, see Knox.
Nottingham, See Bluffton
Oaktown, see Vincennes.
Orangeville, see Paoli.
Orland, see Angola.
Orleans, see Paoli.
Osgan, See Bluffton.
Oxford, see Fowler.
Paoli, Thomas B. Buskirk.
Parker, See Winchester.
Parkersburg, see Crawf'd'vill
Paragon, see Martinsville
Patton, see Sullivan
Pendleton, See Anderson.
Perryville, see Newport.
Petersburg, E. P. Richardson
Pikeville, see Petersburg.
Pittsboro, see Danville.
Pittsburg, See Sullivan.
Plainfield, See Danville.
Pleasant Lake, see Angola.
Pleasantville, See Sullivan.
Pleasant Ridge, | See Rensselaer.
Plymouth, B. D. Crawford.
Portland, Cornelius Corwin.
Poneto, see Bluffton
Princeton, see Vincennes.
Raleigh, See Rushville.
Red Key, See Portland.
Remington, See Rensselaer.
Rensselaer, | Mordecai F. Chilcote.
Reynolds, See Monticello.
Ridgeville, See Winchester.
Rockdale, see Greencastle.
Rockport, Logsdon & Kramer
Rockville, Rice & Johnson.
Rome, See Tell City.
Ross, See Crown Point.
Rossville, See Frankfort.
Royal, see Logansport.
Rushville, Frank J. Hall.
Russellville see Greencastle.
Salem, Alspaugh & Lawler.
San Pierre, see Knox.
Sardinia, see Greensbur
Scircleville, See Frankfort
Sedalia, See Frankfort.
Selma, see Muncie.
Shelbourne, see Sullivan
South Whitley, see Col. City
Scircleville, see Frankfort.
Shoals, see Paoli.
South Bend, T. E. Howard. (Notary Public.)
Spencer, see Brazil.
Spiceland, see New Castle.
Springville see Bedford.
Stockwell, see Lafayette
St. Paul, see Greensburg.
Sullivan, Hays & Hays.
Surrey, See Rensselaer.
Tell City, W. S. Lamb.
Terre Haute and all town in Vigo Co. } James E. Piety
Tocsin, See Bluffton.
Troy, See Tell City.
Tunnelton see Bedford.
Union City, See Winchester.
Unionville, see Paoli.
Valparaiso | Bartholomew & Crumpacker
Vera Cruz, see Bluffton
Veralinz, See Bluffton.
Versailles, { Wm. D. Wilson. C. H. Wilson.
Vincennes, John Wilhelm.
Wakarusa, see Elkhart.
Walcott, See Monticello.
Walkerton, see South Bend.
Walton, see Logansport.
Washington, see Petersburg.
Waterloo, see Butler.
Waveland, see Crawfordsville
Waynetown, see Crawf'd'vill
Westport, see Greensburg.
West Baden, see Paoli.
West Point, see LaFayette
Wheeler, see Valparaiso.
Winamac, see Knox.
Winchester, A. J. Stakebake.
Wingate, see Crawfordsville.
Zanesville, see Bluffton
Zionsville, see Indianapolis.

IOWA

Adel, White & Clarke.
Agency, see Ottumwa.
Albion, see Marshalltown.
Afton, see Creston.
Ainsworth, see Washington.
Allerton, E. L. Hart.
Algona and all towns in Kossuth Co } Geo. E. Clarke,
Arcadia, See Carroll City.
Alton, see Orange City.
Altoona, See Des Moines.
Allison, Craig & Smith.
Amelia, see Cherokee.
Anamosa, John S. Stacy.
Anita see Atlantic.
Aspinwall, see Denison.
Astor, see Denison.
Augus, See Boone
Aplington, See Allison.
Atlantic, Churchill & Swartz.
Audubon, H. E. Andrews.
Avoca, See Council Bluffs.
Ayershire, see Emmetsburg
Bagley, see Guthrie Centre.
Bancroft, See Algona.
Bartlette, See Hamburg.
Bassett, See New Hampton.
Battle Creek, See Ida Grove.
Belmond, see Eagle Grove
Bevington, see Winterset.
Big Rock, See Davenport.
Birmingham, see Fairfield.
Blanchard, see Clarinda.
Boone, J. R. Whitaker.
Bradyville, see Clarinda.
Brandon, see Independence.
Brayton, See Audubon.
Breda, See Carroll City.
Brighton, see Washington.
Brighton, see Fairfield.
Bristow, See Allison.
Bristol, see Northwood
Buffalo, See Davenport.
Burlington and all towns in Des Moines Co. } W. B. Culbertson.
Burt, see Algona.
Calliope, see Elk Point, Dak.
Carroll City, Jos. M. Drees.
Carroll, See Carroll City.
Coon Rapids, see Carroll City
Camanche, See Clinton.
Carson, See Council Bluffs.
Cascade, See Dubuque.
Casey, see Guthrie Centre
Cambridge, see Nevada
Cedar Falls, see Waterloo.
Centre Point, see Marion.
Centre Junct, see Anamosa.
Chariton, M. E. Thorpe.
Churdan, See Jefferson.
Cleveland, see Chariton.
CharlesCity, See Nora Springs
Cherokee, Jos. H. Jones.
Chillicothe, see Ottumwa.
Cincinnati, see Centerville.
Clarinda, S. C. McPherrin.
Clarksville, See Allison.
Clayton, see McGregor.
Clarion, see Eagle Grove.
Clear Lake, See Mason City.
Clermont, see West Union
Clinton, Geo. B. Young.
Clearfield, see Cr
Colfax, See Newton.
Colfax, See Newton.
Color do, see Nevada
Columbus Jc., see Wapello.
Concord, Brockway & Elder.
Conesville, see Muscatine.
Conrad, see Gruudy Centre.
Correctionville, see I. Grove.
Corydon, See Allerton.
Cooper, See Jefferson.
Corning, Maxwell & Dale.
Council Bluffs { Smith, Carson & Harle
Crawfordsville, } see Washington
Creston, Jas. G. Bull.
Cromwell, see Creston.
Cumberland see Atlantic.
Curlew, see Emmetsburg
Dallas Centre, see Adel.
Dakota City, See Humboldt.
Danbury, see Ida Grove.
Davenport, A. J. Hirschl
Danville See Burlington.
Dayton, see Fort Dodge.
Dedham, See Carroll City.
Delaware, see Manchester.
Derby, see Chariton.
Delta, see Sigourney.
Delmar, See Clinton.
De Soto, see Adel.
Denison, D. L. Boynton.
Des Moines, Callender & Smith.
DeWitt, See Clinton.
Dexter, See Adel.
Dorchester, see Lansing
Dixon, see Davenport.
Doon, see Rock Rapids.
Dover, see Keokuk
Dow City, see Denison.
Dubuque, Utt Brothers.
Dumont, See Allison.
Dunlap, See Logan.
Dyersville, See Dubuque
Dysart, see Toledo.
Earlham, see Winterset
Early, see Sac City.
East Port, see Hamburg

Eddyville. see Ottumwa.
Eldon, see Ottumwa.
Elgin, see West Union.
Elkader, see McGregor.
Elk Port. see McGregor.
Ely, see Cedar Rapids.
Emmetsburg, C. E. Coheon
Epworth, See Dubuque.
Essex, see Clarinda.
Estherville, Soper & Allen.
Extra. See Audubon.
Fairbanks, see Independence
Fairfield, M. A, McCold.
Fairrpot, see Muscatine.
Farley, See Dubuque.
Fairfax, see Marion.
Farnhamville | see Rockwell City.
Farragut, See Hamburg.
Fayette, see West Union.
Ferguson, see Marshalltown.
Fertile, see Northwood
Fonda, see Pocahontas.
Fontanelle, see Winterset.
Fort Dodge, A. E. Clarke.
Fort Madison, Casey & Casey
Fowler, see Mew Hampton.
Fremont, see Oskaloosa.
Fredericksburg, see New Hampton
Galia, See Ida Grove.
Garwin, see Toledo.
Garrison, See Vinton.
Gilden, See Carroll City.
Gilman, see Marshalltown,
Gilmore, see Pocahontas.
Gladbrook, see Toledo.
Gladstone, see Toledo.
Goshen see Mount Ayr.
Gowrie, see Fort Dodge.
Grafton, See Northwood.
Granville, see Orange City.
Grand Junction, see Jefferson
Gray, See Audubon.
Grafton, see Northwood.
Greene, See Allison.
Greenfield, see Winterset.
Greeley, see Manchester.
Griswold see Atlantic.
Grundy Centre Rea & Hayes.
Guttenburg, see McGregor.
Harbur, See Carroll City.
Hawarden, See Elk Pt. Dak·
Hamburg, Stow & Hammond
Harlan, Macy & Gammon.
Harper' Ferry ·SeeLansing.
Harper, see Sigourney.
Havelock, see Pocahontas.
Hawkeye, see West Union.
Hazelton see Independence.
Medrick, see Sigourney.
Hepburn, see Clarinda.
High Lake, see Estherville.
Holland, see Grundy Centre,
Holstein, See Ida Grove.
Hoope s. s·e Orang City.
Hubbard, see Eldora.
Humboldt, A. D. Bicknell.
Ida Grove, Jay D. Miller.
Independence, John J. Ney.
Ionia, See New Hampton.
Iowa City, A. E. Swisher.
Imogene, see Hamburg
Ireton, see Orange City.
Irvington, see Algona.
Jefferson, Z. A. Church.
Jessup, see Independence.
Jolley, see Rockwell City
Kellerton, see Mount Ayr.
Kellogg, See Newton.
Keota, see Sigourney.
Kalo, see Fort Dodge.
Kensett, see Northwood
Kent, see Creston.
Keokuk, W. B. Collins.
Kingsley, see LeMars.
Lake City, see Rockwell City.
Lake Mills see Northwood.
Lansing, L. E. Fellows.
Laporte, see Waterloo.
Larchwood, see Rock Rapids.
Lawler, see New Hampton.
Laurens, see Pocahontas.
Leighton, see Oskaloosa.
Lettsville, see Wapello.
Le Claire, see Davenport.
Le Grand, see Marshalltown.
Lehigh, see Fort Dodge.
LeMars, Amos & Alline.
Lewis see Atlantic.
Linevill e, See Allerton.
Lisbon, see Marion.
Liscomb, see Marshalltown.
Little Rock, see Rock Rapids
Little Sioux, see Logan.
Livermore, See Humboldt.
Logan, J. W. Barnhart.
Luverne, see Rockwell City.
Lone Tree, See Iowa City.
Lucas, see Charlton.
Lyon. See Clinton.
Macedonia, see Council Bluffs
Macksburg, see Winterset.
Magnolia, see Logan.
Manson, see Rockwell City.
Mallard, see Emmetsburg
Manchester, Bronson & Leroy
Manly, see Northwood.
Manning, See Carroll City.
Manson, See Rockwell City.
Marcus, see Cherokee.
Marion, J. C. Davis.
Marne see Atlantic.
Mapleton, T. B. Lutz.
Martinsburg, see Sigourney.
Marion, see Cedar Rapids.
Marshalltown, Boardman & Bradford
Mason City, Miller & Cliggett.
Masonville, see Manchester.
Mau ice, see Orange City.
Maynard, see West Union.
Maxwell, see Nevada
McGregor, Asahel Chapin.
McPaul, see Hamburg
Mediapolis, see Burlington.
Melburne, see Marshalltown.
Meridan, see Cherokee.
Merrill, see LeMars.
Messina see Atlantic5
Miles, see Maquoketa.
Minburn, see Adel.
Minden, see Council Bluffs.
Mitchelville, see Des Moines
Modale, see Logan.
Mo. Valley, See Logan.
Moingona, see Boone.
Mondamin, see Logan.
Monroe, See Newton.
Monticello, see Anamosa.
Montour, see Toledo.
Montrose, see Keokuk
Mount Ayr, Morris & Allyn.
Monmouth, see Maquoketa.
Mo. Valley, see Logan.
Morrison, see Grundy Centre.
Moulton, see Centerville.
Mount Etna, see Corning.
Mount Pleasant, | Woolsen & Rabb.
Murray, See Osceola.
Muscatine, T. R. Fitzgerald,
Mt. Vernon, see Marion.
Nashua, see New Hampton
Neola, see Council Bluffs.
Nevada, J. A. Fitchpatrick.
New Albion see Lansing.
New Hampton, J. H. Powers.
New Hartford, see Allison.
Newmarket, see Clarinda.
New Sharon, see Oskaloosa.
Newton, Jas. A. Kerr.
Nichols, see Muscatine.
Nodaway, see Corning.
Nora Springs, E. S. Wheeler.
Northwood, Pickering & Hartley.
Nugent, see Marion.
Oakfield, see Audubon.
Oakland, see Council Bluffs.
Olin, see Anamosa.
Onawa City, see Mapleton.
Osage and all towns in Mitchell Co | F. F. Coffin.
Orange City, | Pitts & Kissey. Have abst'ct of Title
Osceola, M. L. Temple.
Otho, see Fort Dodge.
Oelwein, see West Union.
Ogden, see Boone.
Ottumwa | Chambers, McElroy & Carver
Oxford Junc't. see Anamosa.
Paris, see Marion.
Paton, see Fort Dodge.
Parkersburg, see Allison.
Paton, See Jefferson.
Patterson, see Winterset.
Pattersonville, | see Rock Rapids.
Paulina, see Sanborn.
Percival, see Hamburg.
Perry, see Adel.
Peru, see Winterset.
Percival, see Hamburg
Peterson, see Spencer.
Plover, see Pocahontas.
Pocahontas, Bradley & Harlan.
Prairie City See Newton.
Preston, see Maquoketa.
Plum Hollow, see Hamburg.
Plymouth, see Mason City.
Polk City, see Des Moines.
Pomeroy, See Rockwell City
Postville, see Lansing.
Prescott, see Corning.
Primghar, see Sanborn.
Princeton, see Davenport
Randalia, see West Unlom.
Sandusky, see Keokuk
Ramsey, see Algona.
Redfield, see Adel.
Red Oak, Smith McPherson.
Redding, see Mount Ayr.
Reinbeck, see Grundy C'ntr,
Reubens, see Pocahontas.
Rolfe, see Pocahontas.
Remsen, see LeMars
Richmond, see Washington.
Ripley, see Jefferson.
River Sioux, see Logan.
Riverton, see Hamburg.
Riverside, see Washington.
Rock Falls, see Mason City.
Rockford, see Nora Springs.
Rock Rapids, E. C. Roach.
Roselle, See Carroll City.
Rock Valley, see Orange City.
Rodman, see Emmetsburg
Roland, see Nevada
Rome, see Fairfield
Ross, see Audubon.
Rowley, see Independence.
Russell, see Charlton.
Sac City, Chas. D. Goldsmith
Sanborn, Warren Walker.
Saylorville, see Des Moines,
Schaller, see Sac City.
Seney, see LeMars.
Seymour, See Allerton.
Scranton, see Jefferson.
Shellsbugh, See Vinton.
Shell Rock, see Allison.
Sheldon, see Sanborn.
Shenandoah, see Clarinda.
Sheridan, see Orange City.
Sidney, see Hamburg
Sigourney, | Sampson & Brown
Sioux City and all towns in Woodbury Co | J. P. Blood.
Solon, see Iowa City.
Southerland, see Sanborn.
Springfield, see Marion.
State Centre see Marshalltown
St. Charles, see Winterset.
St. Anthony see Marshalltown
Shambaugh see Clarinda.
Steamboat Rock, see Eidora.
Story City, see Nevada
Stratford, see Fort Dodge.
Sully, See Newton.
Swan Lake, see Estherville.
Tabor, see Hamburg
Tama City, see Toledo,
Traer, see Toledo.
Templeton, See Carroll City.
Thayer see Creston.
Tingley, see Mount Ayr.
Toddville, see Marion.
Toledo, J. A. Merritt.
Troy Mills, see Marion.
Truro, see Winterset.
Union, see Eldora.
Vail, see Denison.
Van Meter, see Adel.
Van Wert, see Osceola.
Village Creek, see Lansing
Viola, see Marion.
Vining, see Toledo.
Vinton, Ray Billingsley.
Waucoma, see West Union
Walker, see Marion.
Walnut see Atlantic.
Wall Lake, see Sac City.
Wanbull, see Marion.
Wapello and all towns in Louisa Co. | E. W, Tatlock
West Side, see Denison.
Washington, Dewey & Eicher
Webster City, Chase & Chase.
Wellman, see Washington.
Wellsburg, see Grundy Cntr.
Wesley, see Algona.
West Liberty, see Muscatine.
West Union, | S. B. Zeigler I. M. Weed.
West Bend, see Emmetsburg
West Point, see Keokuk
What Cheer, see Sigourney.
Whitemore, see Algona.
Wilton, see Muscatine.
Winterset, A. W. C. Weeks.
Whittemore, see Algona.
Williams- town. | See New Hampton.
Winthrop, see Independence
Wiota see Atlantic.
Wolcott, see Davenport
Woodbine, see Logan.
Woodburn, see Osceola.
Wyoming, see Anamosa.
Zearing, see Nevada

KANSAS.

Alden, see Sterling.
Abilene, Burton & Crawford
Alma, George G. Cornell
Altamont, see Parsons.
Altoona, see Fredonia.
Assaria, see Salina.
Americus, see Emporia.
Ames, see Concordia.
Argentine, see Wyandotte.
Argonia, see Wellington.
Armondale, see Wyandotte
Atchison, Smith & Solomon.
Atwood M. A. Wilson.
Augusta, see Eldorado.
Baldwin City, see Lawrence.
Barclay, see Os ge City.
Bavaria, see Salina
Barnes, see Greenleaf.
Beloit, see Cawker City.
Belle Plaine See Wellington
Blue Rapids | W. H. H. Freeman.
Burlingame, Wm. Thompson
Bros. See Kingman.
Burr Oak, see Mankato.
Burrton, see Newton.
Buffalo, see Hays City.
Bismark, see Alma.
Bronson, see For Scott
Brown, see Fort Scott.
Bunker Hill, see Russell.
Brookville, see Salina
Canton, See McPherson.
Caldwell, see Wellington.
Canada, see Council Grove
Carbondale, see Osage City.
Cawker City, Frank J. Kelley
Cedarville, see Sedan
Centralia, see Seneca.
Centralia, see Atchison.
Chanute, see Erie.
Chapman see Abilene.
Chase, see Lyons.
Chautaqua, see Sedan.
Cherokee See Girard.
Chetopa, Leroy Neale.
Cheney, see Wichita.
Circleville, see Holton
Clay Centre, and all towns in Clay Co. | W. E. Dunaway.
Clear Water, see Wichita.
Cloverdale, See Sedan.
Clyde, see Concordia.
Concordia, L. J. Crans.
Conway. See McPherson
Colony, see Garnett.
Coyville, see Fredonia.
Cherryvale, see Independence
Cresson, see Stockton,
Derby, see Wichita.
De Soto, see Olathe.
Detroit, see Abilene.
Dodge City and all towns in Ford Co. | Thomas S. Jones.
Doniphan, see Atchison.
Dorrance, see Russell.
Dennis, see Parsons.
Douglass, see El Dorado,
Dwight, see Cawker City
Edgerton, see Olathe.
Effingham, see Atchison.
El Dorado, Eugene E. Carr
Elgin, see Se dan.
Elk City, see Independence
Ellinwood see Great Bend.
Elmwood, see Lyons.
Ellsworth, R. W. Carter.
Emporia, P. P. Hillerman.
Enterprise see Abilene.
Eskridge, see Alma.
Eudora, see Lawrence.
Eureka, T. L. Davis
Fall River, see Eureka.
Fall River, see Fredonia.
Farlington, See Girard.
Farmersburg Se · Sedan.
Fellowsbury, See Dodge City.
Fontana, see Paola.
Fort Scott, W. W. Padgett.
Fredonia, T. J. Hudson.
Fulton, see Ft. Scott
Galva, See McPherson
Gardner, see Olathe.
Garnett, A. J. Smith.
Gaylord, Webb McNall.
Genda Springs, see Wellington
Girard, James Brown.
Glasco, see Concordia.
Glen Elder, see Cawker City,
Gorham, see Russell.
Great Bend, Clayton & Clayton
Greeley, see Garnett
Greenleaf, W. P. Mu.ett.
Grinnell, see Hays City.
Harts Mills, See Sedan
Haysville, see Pratt.

Hays City, C. W. Reed.
Herndon, see Atwood.
Harper, Sam S. Nisson,
Hartford, see Emporia.
Harveyville, see Alma.
Hepler, See Girard.
Hiawatha see Atchison.
Hillsboro, see Marion Centre.
Hillsdale, see Paola.
Holton, Hayden & Hayden.
Humboldt, G. A. Amos.
Hunnewell, See Wellington.
Huron, see Atchison.
Hutchison, Zimmerman & Taylor.
Independence, J. B. Ziegler.
Ionia, see Mankato.
Iuka, See Pratt.
Jamestown, see Concordia.
Jewell City, see Mankato.
Kansas Centre, see Lyons.
Kansas City, see Wyandotte
Kirkfield, See Dodge City.
Lancaster, see Atchison.
Laudell, see Atwood.
Lawrence, R. J. Borghalthaus
Laura, see McPherson.
La Cygne, J. V. Donaldson
La Fountain see Neodesha.
Leabo, see Burlington.
Leavenworth, J. D. Shafer.
Lehigh, see Marion Centre.
Lenora, see Norton.
Leon see Eldorado.
Lincoln and all other towns in Lincoln Co. } Lou A. Minx
Lindsburg, see McPherson.
Little River, see Ellsworth
Lima, See Greenleaf.
Liberty, see Independence
Little River, see Lyons.
Lou sburg, see Paola.
Louisville, R. S. Hick.
Lyndon, see Osage City.
Lyons, J. W. White.
Madison, see Eureka.
Mankato, Wm. Metcalf.
Marion, see Marion Centre.
Marion Centre, L. F. Keller.
Melverne, see Osage City.
Memphis, see Fort Scott.
Mount Nebo, See Pratt.
Murdock, See Kingman
McPherson, D. P. Lindsay.
Motor, see Stockton.
McCune, See Girard.
Milan, see Wellington.
Miltonvale, see Concordia.
Minersville, see Concordia.
Monmouth, See Girard.
Monrovia, see Atchison.
Montania see Parsons.
Morganville, see Clay Centre
Mound Valley, see Parsons.
Mulvane, See Wellington.
Muscotah, see Atchison.
Neodesha, see Fredonia.
Neosho Rapids see Emporia.
Netwakee, see Atchison.
Newark, see Neodesha.
Netawaka, see Holton
New Cumbria, see Salina
Nickerson, see Hutchison.
Northfield, see Wellington.
Omro, see Mankato.
Olathe, G. B. Lord.
Oakland, See Kingman.
Ottawa, Enoch Harpole.
Onaga, see Louisville.
Oneida, see Seneca.
Opolis, See Girard.
Osage City, H. B. Hughbanks
Osage Mission, see Erie.
Osawatomie, see Paola.
Oswego, Jess. Brockway
Ottumwa, see Burlin.
Oxford, See Wellington.
Palmer, see Greenleaf.
Parsons, James J. McFreely
Pawnee Rock see Great Bend.
Peabody, see Marion Centre.
Penn, see Sedan
Pittsburg, see Girard.
Plainville, see Stockton.
Pleasanton, Blue & Rich.
Pratt, H. F. McGrew.
Raymond, see Sterling.
Raymond, see Lyons.
Reading, see Emporia,
Rosedale, see Wyandotte.
Russell, H. C. Hubbard.
Salem, see Mankato.
Saratoga, see Pratt.
Scandia, see Concordia.
Scranton, see Osage City.
Sedan, J. D. McBrian.
Severy, see Eureka.
Spring Creek, see Sedan.
Spring Hill, see Olathe.
Salem, see Jewell City.
Salina, } T. F. Garver. T. L. Bond.
Sedgewick, see Newton.
Seneca, J. P. Taylor.
Soldier City, see Holton
Solomon City see Abilene.
Spring Hill, see Paola.
Stafford, See St. John.
St. John, Weeks & Bennett.
St. Marys, see Louisville.
Stockton, W. H. Barnes.
Strawn, see Burlington.
Sturling, see Ellsworth.
Thomas Centre, see Atwood,
Tipton, see Cawker City.
Toronto, see Eureka.
Topeka, A. BERGEN.
Troy, see Atchison.
Uniontown, see Fort Scott
Valley Centre, see Wichita.
Vining, see Clyde,
Walnut, see Erie.
Walton, see Newton.
Wakefield, see Clay Centre.
Wm. Keeney, see Hays City.
Wallace, see Hays City.
Wano, see Atwood.
Washington, See Greenleaf.
Wamega, see Louisville.
Wabaunsee, see Alma.
Waterloo, see Kingman.
Windom, see McPherson.
Webster, see Stockton.
Welda, See Garnett.
Wellington, Ledru Guthrie
Westphalia, see Garnett.
Westmoreland, see Louisville
Wilson, see Ellsworth.
Whitemore, see Seneca.
Whiting, see Atchison.
Whitney, see Holton
White City, see Council Grove
Wichita, J. M. Balderston.
Winfield, M. G. Troup.
Wyandotte, see Kans. City Mo
Yates Centre, W. H. Slavens

KENTUCKY.

Adairsville, see Russellville
Auburn, see Russellville.
Beech Grove, see Calhoun.
Belleview, see Hopkinsville.
Bowling Green, } Wright & McElroy
Brownsville, } see Bowling Green.
Cadiz, see Hopkinsville.
Calhoun, Jeb. C. Johnson.
Clarkville, see Hopkinsville
Cleopatra, see Calhoun
Central City, See Greenville.
Covington, J. F. & C. H. Fisk
Crofton, see Hopkinsville.
Curdsville, see Owensboro.
Dover, see Maysville.
Elkton, see Hopkinsville.
Elizabethtown Bush & Robertson.
Fairview, see Hopkinsville.
Flemingsburg, T. L. Given.
Frankfort, D. W. Lindsey.
Garrettesburgh, see H'pkinsv'l
George own, see Frankfort.
Glasgow, see Bowling Green.
Gratz, see Owenton.
Glenville, see Calhoun.
Greenville, M. C. Hay.
Harmony, see Owenton.
Hartford, see Owensboro.
Hawesville, see Owensboro
Hopkinsville { Campbell & Campbell.
E. P. Campbell. E. T. Campbell
Island Station, see Calhoun.
Independence, see Covington
Knottsville, see Owensboro.
LaFayette, see Hopkinsville
Livermore, see Calhoun.
Livia, see Calhoun.
Louisville 341 5-Av | NEWTON G. ROGERS.
and all towns in Jefferson Co.
Ludlow, see Covington
Lusby's mill, see Owenton.
Madisonville, see Hopkinsville
Maysville, G. S. Judd.
Maysllcke, see Maysville.
Mouterey, see Owenton.
Morgantown, See Greenville.
New Columbus, see Owenton.
New Liberty, see Owenton.
Owensboro, | R. H. & E. P. Taylor.
Pembroke, see Hopkinsville.
Poplar Grove, see Owenton.
Princeton, see Hopkinsville.
Rochester, See Greenville.
Rumsey, see Calhoun.
Sacramento, see Calhoun.
Shelbyville, see Frankfort.
South Carrollton, } see Greenville.
Warsaw, see Owenton.
Whitesville, see Owensboro.
Yelvington, see Owensboro

LOUISIANA.

Baton Rouge, K. A CROSS.
Clinton. See Baton Rouge.
New Orleans, Cor. Camp. & Com'l. Place. MERRICK, FOSTER & MERRICK
St. James, see New Orleans.
St. Joseph, see Natchez, Miss
Shreveport, John S. Young. Practises in all Federal and State Courts.
Vidalia, see Natchez, Miss.

MASSACHUSETTS.

Amherst, see Northampton.
Ashburnham, see Gardner.
Attleboro, see New Bedford
Boston, 150 Devonshire st. | Upham & Proctor
Brookfield, see Worcester.
E Hampton, see N. Hampton.
Enfield, see Northampton.
Fitchburg, see Gardner.
Florence, see Northampton.
Gardner, E. D. Howe.
Greenfield, F. C. Griswold
Hadley, see Northampton.
Hatfield, see Northampton.
Haydenaville, see N. Hampton
Hubbardston, see Gardner.
Mansfield, see New Bedford
N. Brookfield, see Worcester.
N. Hampton, J. B. O'Donnell.
New Bedford } Wendell H. Cobb
Orange, see Greenfieeld.
Shelburne Falls, see Greenfield
So. Deerfield, see Greenfield
Spencer, see Worcester.
S. Hampton, see N. Hampton
Springfield, } E. P. Bartholomew. H. A. Bartholomew.
Templeton, see Gardner.
Turner's Falls, see Greenfield.
Westminster, see Gardner.
Winchendon, see Gardner.
Ware, see Northampton.
Warren, see Worcester.
Williamsburg, see N. Hampton

MICHIGAN.

Ada, see Lowell.
Albion, See Marshall.
Alcona, see Harrisville.
Algonac, see Port Huron.
Allegan, Padgham & Padgham.
Almont see Lapeer.
Alpena, } Turnbull, Shield & Dafoe.
Ann Arbor, E. K. Frueauff.
Ashton, see Reed Cit .
Bad Axe, see Port Austin.
Bangor, see Paw Paw.
Baraga, see L'Anse.
Battle Creek, See Marshall.
Bay City, Geo. W. Mann.
Belding, See Ionia.
Berrien Spring , see Niles
Bellevue, see Charlotte
Big Rapids, M. Brown.
Black River, see Harrisville.
Bridgeportsee, E. Saginaw.
Breckenridge, see Midland City.
Brighton, see Howell.
Bronson, see Coldwater.
Brockway Centre, | see Port Huron.
Burton Harbor, see Niles
Buchanan, see Niles
Capac, see Port Huron.
Carrollton, see East Saginaw.
Caseville, see Port Austin.
Cedar Springs, see G'd Rapids
Centereville, see Three Rivers
Charlevoix, J. Milo Eaton.
Charlotte, L. H. McCall.
Chase, see Reed City.
Champion, see Maruette
Clare, see Harrison.
Clarksburg, see Marquette
Cheboygan, Geo. E. Frost.
Chesaning, see E. Saginaw
Coldwater, J. G. Parkhurst.
Coleman, see Midland City.
Concord, see Jackson.
Columbiaville, see Lapeer.
Constantine, see Three River
Coopersville, see Grand Haven
Corunna, James M. Goodell.
Decatur, see Paw Paw.
Derr, see Allegan
DETROIT and all towns in Wayne Co } G. H. PAINE
Dexter, see Ann Arbor
Dimondale, see Charlotte
Douglass, see Allegan
East Chain Lake, | see Fair mount.
East Jordan, see Charlevoix
Eaton Rapids, see Charlotte.
East Saginaw, } Wisner & Draper
Edenville, see Midland City.
Emmitt, see Port Huron.
Escanaba, John Power.
Evart, see Reed City.
Farwell, see Harrison.
Fayette, see Escanaba.
Fowlerville, see Howell.
Freeland, see E. Saginaw.
Garden Bay, see Escanaba.
Girard, see Coldwater.
Glen Arbor, see Leland.
Grand Ledge, see Charlotte.
Grand Rapids | D. D. & W. H. Hughes.
Grass Lake, see Jackson.
Gratton Centre, see Lowell.
Greenbush, see Harrisville.
Hanover, see Jackson.
Hartford, see Paw Paw.
Harrison, Wm. H. Browne.
Hart, see Pentwater.
Harrisville, Jas. E. Hunt.
Hartland, see Howell.
Hersey, see Reed City.
Hillsdale and all towns in Hillsdale Co. | E. J. March.
Holland, see Grand Haven.
Homer, see Marshall.
Howell, J. L. Pettibone.
Hubbardstown, See Ionia.
Humbolt, see Marquette
Imlay City, see Lapeer.
Indian River, see Cheyboygan.
Ishpeming, E. E. Osborn
Jewaeekee, see E. Saginaw.
Kalamazoo and all towns in Kalamazoo Co. } J. W. Osborn
Lamont, see Grand Haven.
Lansing, Olds & Robson.
Lapeer, Frank Millis.
Lawton, see Paw Paw.
Lee's Corners, see Midland City.
Leland, Geo. A. Cutler.
Leroy, see Reed City.
Leslie, see Lansing.
Lowell, Milton M. Perry.
Lyons, See Ionia.
Ludington, } White & McMahon.
Mackinac, see Cheboygan.
Manistee and all towns in Mainstee Co. } Ramsdell & Benedict.
Marlette, George McKay.
Marquette, Ball & Hanscomb
Marshall, H. E. Winsor.
Mason, see Lansing.
Maxine City, see Port Huron
Mears, see Pentwater.
Memphis, see Port Huron.
Meredith, see Harrison.
Merrill, see E. Saginaw
Michigammie, see Marquett
Milan, see Ann Arbor.
Montague, see Muskegon.
Mt. Clemens, | Franklin P. Monfort.
Muir, See Ionia.
Muskegon, H. H. Holt.
New Baltimore, | see Mt. Clemens.
New Haven, see Mt. Clemens.
New Buffalo, see Niles
Negaunee see Marquett
Niles, Worth Landon.
Newaygo and all towns in Newaygo Co } William D. Fuller.
North Adams, See Hillsdale.
North Branch, see Lapeer.
Otsego Lake, see Grayling.
Otsego, see Allegan

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TRADE MARKS.

ONE of the most important changes made in the law relating to the registration of trade marks by the Patents, Designs and Trade Marks Act, 1883, (46 & 47 Vict, c. 57) was the extension of the definition of a trade mark so as to include "fancy words." Under the Trade Marks Registration Act, 1875 (38 & 39 Vict. c. 91), the definition of a registrable trade mark (Sec. 10) was purposely framed so as to include fancy words, except in the case of old marks, *i. e.*, marks used before the passing of the act, in which case only "any special and distinctive word or words" were allowed to be registered.

An attempt was iudeed made in *Ex parte* Stephens, 3 Ch. Div. 659, bring a newly invented word within the description of "device," but without success, and down to the coming into operation of the act of 1883, fancy words continued to be excluded from registration, except where they had been used before the act of 1875. The definition section of the act of 1883, however (Sec. 64), not only allows "any special and distinctive word or words" to be registered as an old mark, but specifies among the essential particulars the possession of one of which qualifies for registration irrespective of previous user, any distinctive "fancy word or words not in common nse."

What was wanted by the trader who procured the recognition of fancy words as trade marks was the assimilation of the symbols registrable as new trade marks to the symbols registrable as old ones, and the assimilation generally of the trade marks recognized in this country with those generally recognized abroad, especially in America. The words "fancy word or words" being included in the section, it does not seem to have accurred to those concerned, that the addition of the words "not in common use" by the Board of Trade, might have the effect of raising a difficulty, and even of taking away with one hand what was given by the other. It seems to have been assumed that "not in common use" was equivalent to "not in common use as applied to the goods in respect of which they are registered;" so that the effect would be to make the registrability of words depend, not upon their novelty *in se*, but upon the novelty of the mode of application.

The Board of Trade, however, in the very recent case of Re Stapely and Smith's Trade Mark "Alpine" attemted to set up a distinction between words newly inserted and existing has never hitherto been recognized either in English or American law, and which, if established in England, would set up a new *differentia* between the law of trade marks in force here. and that in force elsewhere, and might be productive of considerable difficulties in connection with the registration in England of the trade marks of foreign owners. In support of the contention of the Board of Trade reliance was placed upon the words "not in common use" as showing that a registrable fancy word must be newly coined, but Mr. Justice Chitty fortunatety found himself able to take the view that an existing word might constitute a "fancy word not in common use" if applied to an article which it had no natural or established connection.

Newly-coined words are especially open to the objection that they may easly come to be descriptive of a special article, and so cease to be distinctive, as "linoleum" was held to be discriptive: *Linoleum Manufactring Co.* v. *Navin*, 38 L. T. Rep. N. S. 448; 7 Ch. Div. 834; whereas such appellations as "Eureka" shirts, "Sefton" cloth, "Crown Seixo" wine, or "Dog'shead" beer, are not nearly so much exposed to the same risk. On all grounds Mr. Justice Chitty's decision is on the side of the ballance of convenience; if the point were determined the other way it would be necessary for traders to endeavor to get the act amended, Although the decision in the 'Alpine' case is so recent, there has already been time for it, to receive support from Mr. Justice Pearson's ruling in the case of *Slazinger* v. *Mallings* (noted *ante*, p. 95), in which he held that the words "The Lawford," which had been registered as a fancy name for lawn-tennis racquets, were properly registered and capable of protection. We ought not to omit to mention that in the "Alpine" case Mr. Justice Chitty very properly ridiculed a contention by the Board of Trade that a word not distinctive in itself could be made so by prefixing "The" to it, so that, according to their argument, "Alpine" would be a bad trade mark, but "The Alpine" a good one. It seems dificult to conjecture who could have invented such a theory.—(The London Law Times.)

BANKERS and business men generally have suffered considerable inconvenience by the delayed payment of drafts and orders presented for payment after the death of the drawer. The Legislature of Massachusetts has just past a law by which savings banks can pay for thirty days after the date of the order, and later, if by actual notice of the drawer's demise has been received, and national banks, trust, safe deposits and all other depositories are allowed to pay out for ten days after the drawer's death, This law applies to single name checks, of course. Henceforth, therefore, the only thing to be considered in taking and depositing such single checks is the drawer's financial standing and character. Hitherto the taker had reason to be afraid that the drawer might die before payment, and if known to the payee, the holder would have to wait one or two years until the estate could be settled, and it might then he proved to be insolvent. Hence a man alone in business had not the same facilities (at least so far as given out checks in the settlement of accounts) as he who had a partner The amendment of the law just enacted was certainly called for, and business men will be glad to know that it has been made.—(Boston Traveler.)

SUPREME COURT OF ILLINOIS.

HEAD-NOTES TO OPINIONS FILED AT MT. VERNON, AND PREPARED BY HON. NORMAN L. FREEMAN, OFFICIAL REPORTER, TO APPEAR IN HIS REPORTS.

1—1.—*Edward P. Stoker* v. *The People of the State of Illinois.*

(Opinion by CRAIG J.)

FILED AT MT. VERNON, JUNE , 1885.

1. CRIMINAL LAW—LARCENY—*Of money collected by a constable.*—A constable who collects money on an execution, and fails to pay the same to the party entitled thereto, is not liable to indictment and conviction for larceny, under section 74 of the criminal Code, but he may be fined under section 79.

Writ of error to the Circuit Court of Jackson County; the Hon. O. A. HARKER, Judge, presiding.

Messrs. *Allen* & *Harben*, for the plaintiff in error.

The indictment was under section 74 of the criminal Code, which presupposes that the goods must have been "delivered" to the party charged, as contradistinguished from a *levy* or a *taking* under legal prosess, that is, they must have been given over in trust.

The case here falls within the provisions section 79 of the Criminal Code. It defines the offense, and fixed the punishment, thereby excluding all the other punishments for this offense: *Gaddis* v. *Richland Co.*, 92 Ill. 119; *Eldridge* v. *Pierce*, 90 Ill. 474.

The money in the hands of the officer is not the property of the plaintiff in the execution until paid over to him: *Zschocke* v. *People*, 62 Ill. 127; *Lightner* v. *Steinagel*, 35 Ill. 513.

Messrs. *McElvain* & *Martin* for the people.

It will be observed that the language used in section 74 of the Criminal Code is comprehensive in its scope and includes all who may embezzle.

The offenses punishable under Sec. 79 are not those promted by a felonious intent, and under it a party could be justly prosecuted for a refusal to pay over moneys collected by him, whether he converted them to his own use or embezzled them or not.

It is not necessary that Aultman, Miller & Co. should have an absolute title or right to the specific money collected by Stoker in order to sustain the verdict in this case. A general or qualified property in the goods stolen or embezzled and the right to possession is sufficient: Moore's Criminal Law, Sec. 501, and the authorities there cited; Wharton's Criminal Law, Sec. 932; *Barnes* v. *People*, 18 Ill. 52.

The general property in the money collected by stoker was in Aultman, Miller & Co., the judgment creditor. When goods are levied upon for the purpose of sale by a constable, he has a special property in them, the judgment debtor retaining a geneneral property in them until their lawful sale on

execution, when the judgment creditor acquires a general property in the proceds of the sale whether he receives such proceds or not: *Zschocke* v. *People*, 62 Ill. 127; 2 Arch., C. P. and Pl. 358.

It matters not whether Aultman, Miller & Co. ever had this money in possession or not. Property may be embezzled before it reaches its owner: Wharton's Criminal Law, Sec. 1010. 1049.

———o———

36—22.— *Catharine Rebhan* v. *Solomon Mueller.*

(Opinion by CRAIG. J., affirming.)

FILED AT MT. VERNON, JUNE—— 1885.

1. WILL—*Time within which probate of, may be had.*—There is no statute or law in this Sate limiting the time of probating a will to any given number of years. In this case, a will was admitted to probate thirteen years after the death of testator, and letters of administration issued on his estate were revoked.

2. ADMINISTRATION—*Acts done under letters not rendered invalid by revocation.*—Where a will of a deceased person is found and probated after the grant of administration on his estate, such letters will be revoked, but all rights acquired under the letters and acts lawfully done will be protected.

Appeal from the Appellate Court for the Fourth District: heard in that court on appeal from the Circuit Court of St. Clair County; the Hon. AMOS WATTS, Judge, presiding.

Mr. W. C. Kueffner and *Mr. J. N. Dill*, for appellant.

"The lapse of seven years after the death of a decedent constitutes a bar to granting letters of administration, but which bar may be removed by showing circumstances which prevented an earlier application for them:" *Fitzgerald* v. *Clancy*, Admr., etc., 49 Ill. 465

And with regard to the time within which the lien of a creditor against the lands of a decedent for the payment of the latter's debts must be enforced, this court has repeatedly decided that

"Although there is not an express statute of limitations within which such a lien may be enforced, it would seem by analogy to the lien of judgments, and the limitations for entry upon and the recovery of lands, that seven years from the death of an intestate should bar such liens:" *McCody* v. *Morran*, 18 Ill. 519; *Reed* v. *Colby*, 89 Ill, 107, and other authorities there cited.

And in Rosenthal, Admr., etc., *v.* Renick et al., 44 Ill. 205, the rule is said to be established in order to protect innocent purchasers.

The reasons for protecting an innocent purchaser against a will kept secret are as cogent as those for protecting him against the secret lien of debts.

By a modern regulation of the Prerogative Court of Canterbury, where probate of a will is applied for more than five years after the decease, some explanation should be given for the delay: In the goods of Darling 3 Hagg., 561; 1 Wms. Exrs., 195.

It also respectfully submitted that a proceeding to probate a will is a suit or action, and that the Statute of Limitations may be held to be applicable to it. An action or "suit" has been defined by this court to be "an attempt to gain an end by legal process:" *Dobbins et al.* v. *First National Bank.*

Mr. R. A. Halbert, for the appellee.

It is expressly provided that, if at *any time* after letters of administration have been granted, a will of the deceased shall be produced and probate thereof granted according to law, such letters of administration shall be revoked: Underwood's Statutes, Chap. 3, Sec. 28, p. 83.

This is certainly an express declaration that wills may be probated at any time while the estate remains unsettled and in course of administration, as is the case here.

It is said by Redfield, that in some of the American States, there is no limit to the time beyond which a will can not be proved: Redfield on Wills, Vol. 3. (7) note 2.

It is held in Massachusetts that a will may be proved in the Probate Court after the

lapse of twenty years, for the purpose of establishing a title to real estate: *Shumway* v. *Holbrook*, 1 Pick. 114.

Although a less period is limited to a grant of letters of administration: *Waters* v. *Stickney*, 12 Allen, 12, 13; *Marcy* v. *Marcy*, 6 Met. 370.

The case of *Fitzgerald* v. *Clancy*, 49 Ill. 465, decides only that claims against an estate can not be enforced against the realty of decedent after seven years; that the lien thereon is lost.

The Prerogative Court of England of course may establish a rule requring an explanation, if the will is not presented for probate for five years. But this is in reference to wills bequeathing personalty and does not apply to realty, as probate of wills devising realty was not requird: Jarman on Wills, Randolph and Talcott's Edition, Vol. 1, p. 50.

4—29.—*William McDowell* v. *Julia Ann McDowell.*

Opinion by GRAIG, J., affirming.

FILED AT MT. VERNON, JUNE—— 1885.

1. CHANCERY JURISDICTION.—A court of equity has jurisdiction of a bill for the partition of land and for the specific performance of a written contract for the conveyance thereof, although a court of law may also have jurisdiction. But when a party has an adequate remedy at law, a court of equity in general will not interfere.

2. When a court of equity acquires jurisdiction of a case, such as a bill for partition of land and to have a written contract respecting other lands, specifically enforced the court on decreeing partition may also enjoin the enforcement of a judgment against the complainant in a forcible detainer suit for possession, although he might have defended successfully at law.

3. EVIDENCE—*Evidence that works no harm.*—The admission of parol evidence which may vary or change the terms of a written contract, when the party introducing the same obtains no relief whatever on the contract, is an error working no harm and no ground of reversal.

4. SAME — *Relevancy.* — When parties living together as husband and wife, separated and agreed in writting for the division of their property, real and personal, in which contract the wife upon receiving her portion was to release the husband from all further claims for dower, it was *held* on bill by the wife for the specific performance of the agreement and for partition, that proof offered by the defendant to show that the wife defended a suit brought by him for divorce and claimed alimony was properly rejected as irrelevant.

5. PARTITION—*Party held to his agreement in prespect to.*—Two persons who had been living together as husband and wife agreed to divide a lot of ground so that the woman should receive one third in value of the whole lot, and they each selected a man who made the division, which was satisfactory to them: on partition the court confirmed this division, without regard to the exact value of the part set off to the woman. *Held*, that the husband could not be heard to allege that the woman received more in value than one third of the whole lot.

56—35.—*James A. Jackson et al.* v. *Eugene H. Lahee, receiver, etc.*

(Opinion by SCOTT, J., affirming.)

FILED AT OTTAWA, JUNE 13, 1885.

1. JUDGMENT—*Creates no lien on property in hands of receiver.*—The recovery of a judgment against partners after the appointment of a receiver to take charge of the firm assets for the benefit of the firm creditors generally, creates no lien against any property or funds of the firm in the hands of the receiver. Such property or funds can not be levied on by an execution, or reached by garnishment, for the reason of its being in the custody of the laws.

2. RECEIVER—*Funds in his hands subject only to order of court appointing him.*—The possession of a receiver, or an officer of the court, is the custody of the law, and he holds the property or the funds for the

benefit of the party or parties whom the court shall find entitled thereto; and the law will not permit the receiver's possession to be disturbed without the consent of the court that first obtained jurisdiction to appoint him.

3. SAME — *When creditors may acquire liens on property and be entitled to priorities over others.*—When a receiver has been appointed on a bill filed by one partner against his copartner, merely to hold the property or funds pending the litigation between the parties, creditors of the firm are not bound to wait till the equities between the parties may be adjusted, as that might never be done. In such case the assets are treated as still belonging to the firm, and creditors may proceed in any lawful way to aquire a lien, entitling them to priority over less diligent creditors.

4. When a receiver was appointed on bill filed by one partner against the other for the settlement and adjustment of the partnership accounts and the payment of creditors of the firm, which was insolvent, and the court had ordered notice to be given to all creditors to come in and prove their debts before the master, it was *held* that one of the creditors by the recovery of a judgment against the firm, during the pendency of said bill, and the filing of a creditor's bill on the same day that the notice to creditors was ordered, did not acquire any lien upon the assets in the hands of receiver, or right to be preferred over other creditors, and this more especially when such creditor proved his claim before the master and shared in the distribution of the funds in his hands.

5. When one partner files his bill against his copartner for a full settlement of the business and affairs of the firm, showing an embarrassed state of affairs, the bringing of of various suits against the firm, and that there was danger of wasting the partnership assets in litigation, and asking the appointment of a receiver, who took possession of all the effects of the firm: *Held*, that this was equivalent to placing the assets of the firm by the voluntary act of the parties under the control of the court for the benefit of their creditors generally, and that after the court had assumed jurisdiction, the parties would not have been allowed to dismiss the suit.

6. ESTOPPEL—*By acts inconsistent with claim.*—Where a creditor of a firm obtained judgment after the appointment of a receiver on a bill between the partners and proved his judgment before the master, in pursuance of an order of the court authorizing the same, and filed his petition to prevent the partners from dismissing their suit and discharging the receiver, and contested other claims presented before the master, and received his *pro rata* share of a dividend ordered to be paid by the receiver: *Held*, that these acts estopped such judgment creditor from claiming priority over other creditors in the final distribution of the assets.

Appeal from the Appellate Court for the First District; heard in that court on appeal from the Circuit Court of Cook County: the Hon. M. F. TULEY, Judge, presiding.

Messrs. Monk and *Elliott*, for the appellants.

Mr. I. K. Boyeson, for the appellee.

SUPREME COURT OF IOWA.

Pickell et al. v. *Owen.*

FILED JUNE 10, 1885.

Where the clerk of the District Court refuses to issue an execution on judgments therein the proper practice is for the judgment creditor to obtain an order from the judge to compel its issue.—Mandamus will not lie.

APPEAL FROM MITCHELL DISTRICT COURT.

This is an action of *mandamus*. There was a demurrer to the petition, which was sustained, Plaintiffs excepted to the ruling on the demurrer, and appeal from the judgment dismissing the action.

ROTHROCK, J,—It is averred in the petition, in substance, that the plaintiffs are the owners of a money judgment, which was duly recorded in the Circuit Court of Mitchell County; and that defendant is the clerk of said court; and that defendant, although

requested to do so, willfully, unlawfully and maliciously refuses to issue execution upon said judgment; and that plaintiffs are without any plain, speedy and adequate remedy at law in the premises; and a writ of *mandamus* is prayed, compelling the defendant to issue an execution as provided by law. There are other allegations in the petition, not necessary to be stated here. The demurrer presents the question whether or not an action of *mandamus* will lie to compel the clerk to issues an execution upon a judgment. It is provided, in section 3376 of the code, that "an order of *mandamus* shall not be issued in any case where there is a plain, speedy and adequate remedy in the ordinary course of the law, except as herein provided.

This proceeding is not within the exception provided in this section of the code, and the question we are required to determine is, have the plaintiffs a plain, speedy and adequate remedy in the ordinary course of the law? Section 2923 of the code provides that "for good cause shown, a judge's order may issue in vacation, directing any of the officers of the court in relation to the discharge of their duties. We are not advised by counsel for plaintiffs why they did not avail themselves of. this more speedy remedy than an original action in *mandamus*. There can be no doubt that an application for an order is plain, speedy and adequate, and it is expressly provided by law. We are not to presume that if the defendant were speedily ordered to issue an execution on this judgment, that he would refuse to obey the order, and subject himself to the penalties of a willful disobedience of the order of the court. We must not be expected to follow the argument of counsel upon the nature of the action of *mandamus*, and in what cases it can be mantained. The action is regulated by statute in this State, and when it is shown there is a plain, speedy and adequate remedy provided by statute, without invoking the aid of *mandamus*, that ought to be an end of the controversy.

Affirmed.

M. M. Browne and *L. M. Ryce* for appellants.

J. H. Sweeney, for appellee.

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SCENES like that which occurred upon the conviction of Lee for murder at the central criminal court are frequent, and arise from the practice of "calling upon" the prisoner after verdict and before sentence. When Lee proposed, in response to the usual question, to discuss the evidence over again, and was stopped by the judge, he said: "Then, why am I asked if I have anything to say? It is a mere farce." So it is, and a wrangle between judge and prisoner, in which the prisoner has the better of the judge, is not a seemly preliminary to the judge passing sentence of death. The practice of calling on the prisoner after verdict, now that the legal technicalities which was used formerly to be raised at that stage no longer exist, answers no purpose except to tempt the prisoner to reopen the facts of his case, or to glory in or justify his crime. If it is still desirable that the prisoner should have an opportunity of moving in arrest of judgment, the formula might at least be altered in accordance with the fact, so that he may be called on to allege any ground of law why sentence should not be passed, and not at so supreme a moment be solemnly invited to do what he is instantly forbidden doing as soon as he attempts it. (London Law Journal.)

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MUTUALITY AND SPECIFIC PERFORMANCE OF CONTRACT RELATING TO LAND.

SUPREME COURT OF MINNESOTA.

March 1885.

Austin v. *Wacks.*

Defendants, in consideration of $100 in hand and $3,400 to be paid inside of ten days togeter whith execution of a mortgage for the balance agreed to cowey certain lands to plaintiff by good and sufficient warranted deed. Withn the ten days plaintiffs agent tendered the payment of $3,500, and promised the execution of the mortgage as agreed as soon as defendant who was then absent, should return. Thit tender was refused by defendant and as soon as he ten days expired, gave notice that they recinded the contract. Upon an action for a spdcific performance of the contract it is HELD that time was not of the essence of the contract an that plaintiff was entitled to recover.

ACTION for specific performance. The court below gave judgment for plaintiff. The facts appear in the opinion.

Baxter and *Grethen*, for appellant.

Thomas Lowery and *William H. Eustis*, for respondents.

VANDERBURGH, J. This action is brought for the specific performance of an agreement for the conveyance of real estate.

On October 15, 1881, which was the date of the contract, and in consideration of the sum of $100, expressed in the writting and paid on the delivery there of, the defendants, Henry Wacks and wife, bargained and agreed to convey to the plaintiffs the premises in question, being the homestead of the defendant Henry Wacks, in the city of Minneapolis. As recited in the agreement, which was under seal and signed by the defendants only, they were "to furnish immediately to said Austin & Grays an abstract of title to said premises, showing same free add clear from incumbrauces; and said Austin & Grays, within ten days from and this 15th day of October, 1881, are to pay us $3,400 additional, and give first mortgage on said premises for $4000, dated October, 25, 1881, due on or before three years from and after said sale, with interest at the rate of eight per cent. per annum, payable semi-annually, total consideration for said premises, $7,500, payable as above; we the undersigned, to retain possession of said premises until December 1, 1881, without rent, and from December 1 to April 1, 1882, at the rate of $25 per month; * * * we to make, execute, and deliver to said Austin & Carys a warranty deed to said premises, conveying same free from all incumbrances immediately on the payment to us, by said Austin & Carys, of said sum of 3,400. "The title to said premises to be prefected or the money this day paid to be refunded; said Austin & Carys to pay as herein provided, or to forfeit the $100 this day paid." This contract was under seal.

This case was tried by the court, and from the facts found it appears that the plaintiffs, who were travelling salesmen, immediately left the city of Minneapolis upon their business, and remained absent until the 23d of October, leaving the matter of examining the title and completing the purchase with one Davidson, their agent. They omitted however to furnish him a power of attorney, or any written authority to act for them. Davidson received the abstract for examination on the 18 th of October, and on the 24th of October, being unable, owing to the continued absence of the plaintiffs, to procure the execution of the mortgage, as required by the agreement, he sought defendant Henry Wacks, and endeavored to induce him to agree to other arrangements in reference to the security for the deferred payment of $4,000, he being prepared to make the cash payment of $3,400. These propositions the defendant took under advisement, and promised to consider the matter, and on the next day Davidson, being still unable to communicate with the plaintiffs, offered to make the cash payment if defendant would execute the required deed to plaintiffs, and deposit the same in escrow for a short time until he could communicate with plaintiffs and procure the due execution of the mortgage. This offer was finally rejected by defendant, who duly tendered on that day a warranty deed of the premises to Davidson, and demanded a strict compliance with the agreement, and notified him that the same would be rescinded unless so complied with.

On the 26th of October defendant Henry Wacks notified Donaldson of his rescission of the contract, and offered to return the $100 received thereon and pay the expense of the abstract, which was refused. On the 29th of October, plaintiffs having duly executed a mortgage of the premises, tendered at the residence of the defendants to the defendant Marie Wacks the money and mortgage, and on the 31st renewed the tender thereof to defendant Henry Wacks, which was refused on the ground that the contract was rescinded through the previous default of plaintiffs. The plaintiffs have since been ready and willing to perform the contract on their part. There had evidently been a marked increase in the market value of the premises, and they were still raising in

value. The court rendered judgment for the plaintiffs upon certain terms and conditions therein provided.

1. It is contended that this contract cannot be specifically enforced in equity for want of mutuality; that equity ought not to interfere to enforce specific performance by defendants of a contract by which plaintiffs are not bound. It was however a valid contract in part executed. It rests upon a valuable consideration, and there is nothing in the case impeaching its fairness.

If there is no other ground of objection, there does not appear to be any good reason why plaintiffs' rights under it should not be fully protected and enforced. 1 Story, Eq. (12th ed.), § 736 a; *Ewing* v. *Gordon*, 49 N. H. 455; *Railroad Company* v. *Evans*, 6 Gray, 32; *W. R. Company* v. *Babcock*, 6 Metc. 354; *Soms of Temperance* v. *Brown*, 9 Minn. 159. 162, (Gil. 144.)

The court has the power to superintend the performance of the conditions of the contract on plaintiffs' part, and provide in its decree for the fulfillment thereof as a prerequisite to relief. Story, Eq., § 778b. The contract must be upon a valuable consideration, not voluntary, and must be fair and equitable in all its parts. It may then be enforced if plaintiff show himself otherwise within the rules applicable to the equitable remedy. The fact however that performance of the unfulfilled stipulations of the contract cannot be enforced by action against the plaintiffs is an important one to be considered in such cases on the question of diligence and good faith on their part. Pom. Contr, §411.

2. Time was not of the essence of this contract. It was not so by its terms. There is no stipulation therein declaring such to be the intention of the parties. The time fixed in the agreement clearly had reference to an early and punctual fulfillment of the contract, but it was not of the substance of it, so that suffering the day of payment to pass, operated in itself to bar plaintiffs' right to be heard in a court of equity. The sale was the principal object, and unless the time named is made essential, either expressly by the contract, or by implication from the situation of the parties or the nature of the case, suffering the day of payment to pass does not ordinarily deprive a party of his equitable remedy. It is sometimes said that time is formal rather than essential. It is not, it is true, of the substance of the contract, like the acts which the parties covenant to preform. It may be material however, though not essential, and these terms are not convertible. *Hubbel* v. *Van Schoening*, 49 N. Y. 330, 331; Pom. Cont., § 373. It is always material as respects the good faith and diligence of the parties, and the equities of the case. *Ewing* v. *Gordon*, 49 N. H. 459; *Tilly* v. *Thomas*, L. R., 3 Ch. App. 67.

The evident tendency of the more recent cases in this country is to hold parties applying for equtable relief of this nature to a more strict accountability for laches in the matter of punctual performance of theircontracts for the purchase of real estate. *Barnard* v. *Lee*, 97 Mass, 93; *Hubbel* v. *Von Schoening*, 49 N. Y. 331; *Merchants' Bank* v. *Thompson*, 55 id. 12. The clause in the agreement providing that plaintifls "were to pay as herein provided or forfeit $100 this day paid" does not operate to make the day fixed essential. Willard, Eq. Jun. 294; *Edgerton* v. *Peckham*, 11 Paige, 352. It was not a plain stipulation that the contract was to be void and ended if not literally fulfilled. In this case time was not made essential by implication; that is to say, by the nature of the subject-matter, the object of contract, or the situation of the parties. Here it does not appear that the vendor needed or had engaged to use the money or security at any particular time, or for any special purpose. No change of residence was contemplated by him for months, nor were any bussiness changes or undertaking dependent on the prompt fulfillment of the contract, or the inducement for making it. No circumstances of this kind were in the minds of the parties in making the contract, or affect its construction. We agree there-

fore with the trial court that the time fixed in this contract is not to be deemed essential and peremtory.

3. It is material to consider whether the plaintiffs have lost their right to a specific performance in equity by reason of being placed in default by defendant's tender of performance and rescission of the contract.

Where time is not in the first instance of the essence of the contract, it is now generally considered that it may be subsequently made so by notice assigning a reasonable time for the completion of the agreement. The notice however to be effectual for the purpose, must not be such as to work a suprise upon the opposite party, but must give him a fair opportunity to protect himself and comply with it. Pom. Cont., § 396. For example, notice to an agent who has no opportunity before the time fixed to communicate with his principal so as to enable him to comply with the terms of his contract, would constitute no bar to the equitable rights of the principal, if due diligence were exercised by the agent. Plaintiffs' default entitled defendant to rescind, and is an absolute bar to relief in equity as well as at law, unless there are equitable circumstances in the case warranting such relief, and the right to equitable relief from such default must turn upon the reasonableness and sufficiency of the circumstances alleged to excuse it, regard being had to the conduct and situation of the opposite party, *Dyer* v. *Hardgrove*, 10 Ves. 505; Pom. Cont., §§ 411, 416.

"A party may not trifle with his contracts and still ask the aid of a court of equity. Neither will the law be administered in a spirit of technicallity so as to defeat the ends of justice." *Hubbel* v. *Van Schoening*, 49 N. Y. 331. Much must be left to the judgment and sound discretion of the judge who hears the case, and where his determination of the merits of the application is reasonably supported by the evidence, and is consistent with the established principles which govern the equitable remedy, it will not ordinarily be disturbed by the appellate court. The evidence in this case clearly shows that the agent, acting in plaintiffs' behalf, made reasonable exertions to comunicate with them, so as to be able to comply literally with the terms of the contract on their part, and that he did not relax his diligence in the premises till their return, and that plaintiffs then continued to manifest equal diligence. Their intention to insist upon the contract is clear, and their omission to provide their agent with a power of artorney, or to return by the day, is not such negligence as under the circumstances should be held fatal to their application for relief. The situation of the defendant was not changed, so far as is shown, in the interval, so that it would have been any more detrimental to him to execute the contract on the 29th than on the 25th of October, particularly in view of the expressed determination of plaintiffs to adhere to it, and their willingness to make the cash payment immediately, and to consent to any arrangement then possible, including the deposit of the deed in escrow, to secure the deferred payment. *Merchants' Bank* v. *Thompson*, 55 N. Y. 16. Whether defendant, as it has turned out, has made a loss by a premature sale is not material, and the question of damage traceable to such cause we need not consider. Under the circumstances presented, the rise in value of the land will not deprive plaintiffs of their remedy. Pom. Cont. 408.

In a strict legal sense, plaintiffs were in default in failling to execute the mortgage on the day, but their negligence was not gross or willful, and is such as the court may, on a proper showing, excuse under the circumstances, in view of their good faith and the promptness of their application. *Davison* v. *Associates*, 71 N. Y. 338. Within the limits of the general rules governing this class of cases, we are unable to see that the trial court erred in adjudging plaintiffs entitled to relief.

It remains to consider a single exception to the ruling of the court in recjecting the offer of defendants to prove by parol that it was understood by the parties, when the

agreement was executed, that a failure by plaintiffs to complete the agreement within the time named, should operate to release the defendants from thier obligations. The offer was properly rejected. It was not an offer to prove facts tending to show that time was impliedly, essential, and which were orally disclosed to the plaintiffs; as for example, that the purchase should be completed at a particular day, to enable the vendor to meet a promise or liability, or to secure a bargain which he might otherwise lose. It is elementary that parol evidence may be received for such purposes, and to show the relations of the parties and surrounding circumstances by the aid of which the contract may be interpreted and understood, and the remedy intelligently and equitably administered. This however does not qualify the general rule applicable as well in equity as in common-law jurisdiction, that where parties have deliberately reduced their engagements to writing in unambiguous terms, parol evidence is not admissible to cantradict or supplement the language used, so as to vary the plain meaning of the instrument, or to show what they meant or understod by it. *City* v. *Thompson*, 24 Minn. 208; *McGuire* v. *Stevens*, 42 Miss. 730; *King* v. *Ruckman*, 21 N. J. Eq. 599, reversing same case in 20 N. J. Eq. 316.

The order denying a new trial should be affirmed.

BROOKLYN BRIDGE TRUSTEES NOT LIABLE FOR INJURY TO ONE CROSSING BRIDGE CAUSED BY PANIC.

NEW YORK CITY COURT, NOVEMBER 20, '83.

Hannon v. *Agnew*.

The trustees of Brooklyn Bridge held not to be liable for injury to one crossing the bridge, caused by a panic among those travelling thereon, either on the ground of permitting the bridge to be overcrowded, or on that of not appointing an adequate police force to prevent such an accident.

ACTION against the trustees of the Brooklyn bridge for personal injuries to plaintiff while crossing the bridge on Decoration day, 1883. The accident took place during a panic among those travelling upon the bridge upon the day mentioned. The court dismissed the complaint.

James M. Lyddy, for plaintiff.

Bergen & *Dyckman* and *A. J. Vanderpoel* for defendants.

MCADAM, J. While it is true that when an individual sustains an injury by the misfeasance or nonfeasance of a public officer, who acts or omits to act contrary to his duty, the law gives redress to the injured party by an appropriate action (*Adsit* v. *Brady*, 4 Hill, 630; *Shepherd* v. *Lincoln*, 17 Wend. 250; *Smith* v. *Wright*, 24 Barb. 306; *Robinson* v. *Chamberlain*, 34 N. Y. 391; *Hover* v. *Barkhoof*, 44 id. 122; *Connors* v. *Adams*, 13 Hun, 429), yet public officers are not liable for the misconduct or malfeasance of such persons as they are obliged to employ, the maxim *respondeat superior* having no application to such officials. *Murphy* v. *Commissioners*, 28 N. Y. 134; *Donovan* v. *McAlpin*, 85 id. 185; 1 Dillon Mun. Cor. 298, note. In other words, public officers while liable to a civil action for willful and capricious omisson of duty resulting in injury to the party complaining, are not liable for mere neglect not personal. In the present case no personal neglect has been proven against any of the defendants. The negligence charged against the defendants consists:

1. In allowing the bridge under their management to be overcrowded on the day the accident occurred.

The evidence proves that there were 87,000 people upon it on the day of the accident, and that 183,000 had crossed it in safty on a previous day, that the arrangement were alike on both days.

2. In not appointing an adequate police force as required by the act under which the defendants were appointid.

The superintendent, by and with the approval of the chairman of the committee on organization appointed by the board of trustees, selected and appointed what they regarded as an adequate police force, which proved sufficient on all occasions prior to the one on which the plaintiff received her

injuries. The evidence fail to show that the alleged irregularity of such appointment in any way contributed to the accident, or that it would have been avoided if double the force had been appointed. The crowd upon the bridge became panic-stricken and unmanageable, and it does not appear that any personal or individual act of the defendants could have prevented such a result. The injury which the plaintiff received was caused by the surging crowd, and no personal act of the defendants has been shown to have been the proximate cause of it.

The trustees acting individually have no powers or functions. The act authorizing the appointment of the trustees provides that they shall have power to make all needful rules and regulations for the government of their board, to appoint one of their number president, and also a secretary and treasurer, and such other officers and subordinates as may be necessary for the performance of their duties. Laws, 1875, ch. 300, § 6. The trustees are therefor to meet and act as a board, in which a majority of the trustees governs (Angell & Ames, Corp., § 501); and in which the minority has no practical control. To hold the trustees of a public work, under such circumstances, personally and individually liable for acts such as the complaint charges, would entail a dangerous responsibility that few would be willing to assume. It would be responsibility without control.

The trustees have no pencuniary interest in the bridge or its income. Their office is one of honor, without emolument. The title to the bridge is vested in the cities of New York and Brooklyn, and the income therefrom is by the terms of the act to be applied toward the payment of the principal and interest of all bonds of the said cities in proportion to the amount issued by the said cities respectively. The office held by the trustees was created by the State, which by legislative enactment formed in effect a new district, composed of part of two cities, and directed the number of trustees who were to have the management and control of the bridge, which was declared to be a public work. The act provides the mode of appointment of the trustees, defined their powers and prescribed their duties. The act provides that the persons appointed, together with the mayors and comptrollers of said two cities, shall constitute the "Board of Trustees" of said bridge, so that in the performance of their duties the trustees are not to act on their individual judgment, but only after the concert plan of action deliberatly agreed upon at a regular meeting of the board, at which, after mutual consultation and advice, the majority is to determine what shall or shall not be done for the public good.

Under the circumstances, no personal, individual liability attaches to the trustees for the act imputed to them by plaintiff.

No personal negligence has been proved against the superintendent, and he being a pnblic officer, is not liable for the negligent acts of the subordinates under his direction.

If the accident of which the plaintiff complains had happened upon a turnpike or bridge conducted by a private corporation for gain, a different question might arise; but under the circumstances disclosed by the evidence, the defendants are not personally and individually liable and the complaint must be dismissed.

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UNITED STATES CIRCUIT COURT NORTHERN DISTRICT ILL.

Before Judge BLODGETT.

Myers v. *Callaghan et al.*

THE LAW OF COPYRIGHT.

THIS case came up on exceptions taken by defendant to the master. The case involved the copyrights to volumes 32 to 46, inclusive, of the Illinois Reports. Judge Drummond long since had decided that Callaghan & Co. had by the publication of the above volumes infringed Myers' copyright in them, and are ference was ordered to master in Chancery Blshop as to volumes 32 to 38 inclusive. Mr. Bishop reported the damages at about $7,000. As to volumes 39 to 45, a reference was made to Master in

Chancery Bennett, who reported damages at about $5,000. Exceptions to both reports were taken by both parties, and were heard by Judge Blodgett in March last.

In the accounting, both masters refused to allow Callaghan & Co. for the cost of the stereotype plates, as well as for the editorial labor and salaries claimed by defendants in their business as a deduction from the amount of money received by them on the sales of the books. The court sustained the ruling of the masters on all these questions as not being legitimate deductions. Mr. Bennett, in ascertaining the average cost of producing the volumes sold, distributed the cost of the whole eddition over all the volumes printed. making those sold the same as those unsold. Mr. Bishop, on the other hand, charged to the books sold the entire cost of the whole edition, so that those volumes remaining unsold cost substantially nothing. The court affirmed both the reports. It is proper to state as to the books in the reference to Mr. Bishop, that a proceeding is pending in the court to compel the delivery of the unsold copies to Myers, and hence it would be proper to allow the defendants credit for the cost of such books in case Myers gets them. On the other hand, as to the volumes in reference to Mr. Bennett, there is no proceeding to compel delivery of the unsold books to Myers, and in that connection the court held that so long as the defendants refused to deliver the unsold books to Myers they should not be allowed the cost of producing them, but if delivered they would be entitled to the cost.

Another question involved was whether the defendants were to be charged with the profits on the copies of the infringing volumes which they had once sold, re-purchased and sold again as second-hand. The court held that a re-sale by the defendants of a second-hand copy was just as much a violation of Myers' copyright as the sale of a new volume, and held them liable to pay the profits on the re-sale.

A decree will be entered for the amounts found due by the two masters, as well as for the amonnt of the profits on the second-hand sales; also for a perpetual injunction. Judge Ceorge W. Cothran represented the complainant, and J. L. High the defense.

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FEDERAL COURTS.

"STRIKERS"—INTERFERENCE WITH RAILROAD IN THE HANDS OF A RECEIVER.—A "strike" was organized on a railroad in Colorado which was in the hands of a receiver appointed by the United States Circuit Court. The leaders of the "strike" made demonstrations and prevented the receiver from operating the road; the mass of the "strikers" did not participate in this interference directly. But four of them were arrested—one, Orr, who was a leader; another, Tyler, who was active but not a leader; another, Murphy, who was still less active; and another, Wheeler, who was simply with the others, claiming, however, that he went with the others in the hope that he could protect the property of the company. In the proceeding, the United States Circuit Court, District of Colorado, through Judge Brewer, ordered the imprisonment of Orr for four months; of Tyler for thirty days; of Murphy for ten days; and discharged Wheeler on his own recognizance to keep the peace and not to interfere with the receiver, In giving these Judgments, he said: "1. Every man has a right to work for whom he pleases, and to go where he pleases, providing in so doing he does not trespass on the rights of others; and the employer of another man, unless there is a contract of some time, may rightfully say to his employe, at any time, "I have no further need of your services.' 2. Where a party of men combine, with the intent to do an unlawful thing, and in the prosecution of that unlawful intention one of the party goes a step in advance of his associates and does acts whichthey do not, all of the combination are guilty of his offense. 3. No man is bound to stay a single day in the employment of the receiver appointed by this court, and no man

must interfere with the property, or with the management of that property, so long as it is in the hands of the court; and if there is any subsequent demostration similar to this which is now before me, I want to say most kindley, but most emphatically, so that nobody may misunderstand, that any parties who are engaged in it and who are brought before me for contempt must expect the severest penalty which the law permits. If there is any man who feels that he is in any way wronged by a receiver of this court, all he has to do is to make his grievances known, and they will be heard, and the court will try to do justice by him as well as by the receiver; but no violence in any way, shape, or manner will be tolerated in the slightest degree."—*United States* v. *Kane*—(Breuer J.)—C. C. D. C. Colorado June 1885.

RAILROADS—LOSS OF BAGGAGE—NOTICE—CONNECTING LINES—THROUGH TICKET—M. bought three coupon tickets from the New York, Lake Erie & Western Railroad Company at its office in New York to carry him to Weyauwega, Wis.—one ticket to carry him over its road to Salamanca, then over another and connecting road to Mansfield O., then over another and connecting road to Chicago; the second ticket to carry him over another and connecting road to Millwaukee; and the third ticket to carry him over another and connecting road to Weyauwega. His baggage was checked for Chicago, and just before reaching that place he gave up his checks to a railroad official and took from him other checks to his destination. One of his boxes which reached Chicago, was lost between that place and Weyauwega, and he brought suit for its value in the United States Circuit Court, Eastern District of Wisconsin, against the New York company. In this case it appeared that on the tickets handed to M there was an indorsement limiting the liability of the company for loss, because of the reduced fare, to $50 and on wearing apparel only, but his attention was not called to this indorsement; and it was also shown that neither M nor his companion could read English. Judge Dyer, in charging the jury, said: "1. A shipper of goods is bound by the conditions in the bill of lading, but a passenger is not bound by a condition on his ticket unless his attention is called to it, or the circumstances of the purchase and use of the ticket are such that only through negligence could the purchaser fail to see the condition. 2. In the absence of a special contract, a carrier is not bound for the loss of goods beyond its line. 3. The sale of a through ticket, of itself, will not make a special contract to carry baggage beyond the carrier's line; but the circumstances of the sale of a throug ticketmust be considered by the jury to determine whether such a special contract was made. 4. The plaintiff can recover for baggage only, and as to what baggage is can be stated only in general terms. Baggage includes wearing apparel, but it may be of other like things too, as cloth for clothing and personal ornaments of value. But bedding and the like are not included."—*Muntz* v. *N. Y., L. E. & W. R. R. Co.*—(Dyer J.)—U. S. C. C. Wis. July 1885.

SUPREME COURT OF OHIO.

INSURANCE COMPANY—SECURITIES DEPOSITED WITH SUPERINTENDENT OF INSURANCE—MAKER'S OF ACCOMMODATION NOTES.—A life insurance company deposited with the Superintendent of Insurance, under the requirments of the statute, securities to the amount of $100,000 to secure the policy-holders of the company. The company became insolvent, and in a proceding to dissolve the corporation and to settle its liabilities a receiver was appointed. The securities so deposited were in promissory notes secured by mortgages on real estate, and the receiver began suits to foreclose. Amongst these notes where ohligations of F and S, given to accommodate the owners, who set up the defense that the receiver could not collect these notes for the benefit of the general creditors; that they were given to

secure the policyholders only; and that, as the receiver took only the title of the company itself to these notes, he could not recover on the notes, because the company could not recover on notes given for its accommodation. The court below decided in favor of the receiver and the defendant appealed. Judge Follett, in the oppinion, said: "Before these mortgages can be foreclosed there must be shown some specefic amount due or to become due on account of the policyholdes, and that this amount is a claim against this special deposit. And when such amount is ascertained, the amount needed from the deposit to pay it should be obiained through the Superintendent of Insurance, who is the holder in trust of the deposited securities. The receiver has no interest or rights in these securities which the company itself did not have, and he cannot realize upon them for the benefit of the general creditors except through the ownership of the company. Now, the notes and mortgages, of F and S were not the property of the corporation; they were accommodation notes and mortgages, made without consideration, and taken and used by the corporation for a specific purpose. As against the makers the corporation had no right to them for any other purpose. It could not compel payment of the notes, nor could it foreclose the mortgages. The makers of the notes and mortgages have a full defence to the claims of the general creditors, and the judgments below must be reversed."—*Falkenbach* v. *Patterson*—(Follett J.)—Sup. Court of Ohio July 1885.

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POSTING LETTERS.—At a lecture delivered in London a few nights ago the question was raised of the possibility of the post-office supplying, wherever it may be desired, official proof of the posting of letters. Unquestionably if this could be done it would be both a convenience to the public and of practical value in the administration of justice. At present the very loosest evidence of the posting of letters is often accepted in the courts of law, and owing to the overwhelming probability of a letter when once written, directed and stamped, duly reaching its destination, such evidence has a tendency to become still looser. It has happened within our experience that the evidence of a plaintiff that he placed a letter, stamped and addressed, on the corner of a table where his business letters were always placed, and whence it was the duty of an office boy to remove them from time to time, for posting, has been admitted by a judge as a proof of the posting of the letter. It is true that an official receipt can already be obtained for a registered letter; but the fee of registration is so high as practically to prohibit the process, except in the case of letters of great value or importance. What is now suggested is that forms should be issued at about 3d. a dozen, to be filled up with particulars of the address by the sender of the letter, and simply examined, stamped and returned at the receiving office. A process so simple as this could be carried out at a very trifling cost to the department, and might very probably—as has already been proved with other small conveniences of a similar kind — be converted into a profitable source af revenue. — (London Law Times.)

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HOW TO REACH THE RESORTS OF COLORADO.

COLORADO has become famous for its marvelous gold and silver production, for its picturesque scenery, and its delightful climate. Its mining towns and camps, its massive mountains, with their beautiful green-verdured valleys, lofty snow-capped peaks and awe-inspiring canons, togeterh with its hot and cold mineral springs and baths, and its healthful climate, are attracting, in greater numbers each year, tourists, invalids, pleasure and business seekers from all parts of the world.

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———o———

ORIGIN OF TRIAL BY JURY.

1. Phillips and Probst maintain that it originated among the Welsh, from whom it was borrowed by the Anglo-Saxons.

2. Coke, Van Maurer, Phillips, Selden, Spelman and Turner regard it as having been orginal with the Anglo-Saxons.

3. Bacon, Blackstone, Montesquieu, Nicholson and Savigny hold that it was imported from primitive Germany.

4. Konrad Mauer thinks it is of North German origin.

5. Warmius and Warsaae agree that it was derived from the Norsemen, through the Danes.

6. Hicks and Reese think it came from the Norsemen, through the Norman conquest.

7. Daniel says the Normans found it existing in France, and adopted it.

8. Mohl thinks it derived from the usages of the Canon law.

9. Meyer thinks it came from Asia by way of the Crusades.

10. Maciejowski says it was derived from the Slavonic neighbors of the Angless and Saxons.

11. Brunner, Palgrave and Stubbs derive it from the Theodosian Code, through the Frank Capitularies.

12. Hume says that it is derived from the decenary judiciary, and is "an institution admirable in itself, and the best calculated for the preservation of liberty and the administration of justice, that was ever devised by the wit of man."—Irish Law Times.

———o———

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pp 249-64 simply advertising

The Chicago Law Journal.

CHICAGO, SEPTEMBER, 1885.

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SUPREME COURT OF CALIFORNIA.

MEDICAL BOOKS—WHEN ADMISSABLE AS EVIDENCE—SCIENTIFIC AND HISTORICAL BOOKS.—Medical books are held not admissible as evidence in an action for personal injuries, to show the extend and effect of such injuries. Scientific and historical books are *prima facie* evidence of facts of general notority. Where a medical expert is called as a witness and refers to certain books, the books may subsequently be admitted to contradict him.—*Gallagher* v. *Market St. R. R. Co.*—Filed May 6, 1885.

SLANDER—SUFFICIENCY OF ALLIGATIONS IN THE COMPLAINT—EXCESSIVE DAMAGES—Where the complaint alleges the falsly and maliciously speaking the words "you are a thief; you make your money by stealing" this is sufficient. Such words are actionable *per se*. Plaintiff, in aggravation of damages, may show that he is a married man and has a family. Where there were strong mitigating circumstances $3000 is *held* to be excessive damages.—*Rhodes* v. *Noglee*—Filed April 29, 1885.

INSOLVENT LAW—EFFECT OF DISCHARGE ON DEBTS DUE IN OTHER STATES.—In *Penniman* v. *Meigs*, 9 Johns. 325; it was *held* that a discharge under the insolvent laws of New York was a bar to any action in that State, no difference where the contract was made. In *Blanchard* v. *Russell* 13 Mass. 1, it was *held* that a discharge under the insolvent law of the State where the contract was made was a bar to an action upon the same contract in another State. In *Suydam* v. *Brooduox* 14 Peters 67. *Held* that a discharge under the insolvent law of a State cannot be pleaded to an action by citizen of another State in the Federal Courts. *Held* that a discharge by a State Court is no bar to an action by a creditor who is a nonresident of the State and has had no notice of or took no part in the proceedings.—*Rhodes* v. *Borden*—Filed May 5, 1885.

SUPREME COURT OF COLORADO.

BOND OF PUBLIC OFFICER—NEW DUTIES IMPOSED ON CITY CLERK—LIABILITY OF HIS BONDSMEN.—Where the collection of license money was not within the scope of the city clerks duties when he entered upon his office and gave his bond, but was subsequently imposed upon him by ordinance of the council, his bondsmen are liable for his default in these new duties imposed the same as if they had been originally a part of his duty.—*Orman* v. *Pueblo.*—Filed May 8, 1885,

SUPREME COURT OF INDIANA.

REVERSAL OF JUDGMENTS—WHAT ERRORS SUFFICIENT—GENERAL QUESTIONS.—The refusal of a court to allow a general question is not material, if the facts sought to be discovered by it are brought out by other questions, and a judgment will not be reversed except for material errors.

A contract partly written and partly oral is held to be merely an oral contract, yet the written part may be introduced as evidence the same as any other writing tending to establish the contract.—*Tomlinson* v. *Briles*—Filed May 13, 1885.

MORTGAGE—EFFECT OF CANCELING AN OLD MORTGAGE AND SUBSTITUTING A NEW ONE—Upon the maturity of a mortgage it is agreed, by the parties thereto, that it shall be extended, and in doing so the old mortgage is canceled and a new one executed instead. *Held* that the cancellation of the old and substitution of the new are contemporaneous acts and that he lien acquired by and under the old mortgage is continued.—*Pouder* v. *Ritzinger*—Filed May 12, 1885.

SUPREME COURT OF IOWA.

PRACTICE—MOTION TO COMPEL ELECTION—AUTHORITY OF WIFE TO EMPLOY DOMESTIC.—The question of granting or refusing a motion to compel the plaintiff to elect between an allegation of an agreed price and an allegation of reasonable value of services, is within the discretion of trial court. Where a wife, living with her husband, employed a servant for ordinary domestic services, it will be presumed that she had authority to do so, without any express authority from her husband—*Wagner* v. *Nagel*—Filed May, 8, 1885.

CRIMINAL PROCEDURE—INDICTMENT BASED ON MINUTES OF TESTIMONY BEFORE A COMMITTING MAGISTRATE.—Where an indictment was found by a grand jury without the witnesses being produced and sworn, but simply by producing the minutes of the testimony taken before the committing magistrate, the defense objected to the testimony of those witnesses on the trial. The objection was overruled and the testimony admitted. *Held* that the testimony was properly admitted. That under Sec. 4273 of the code 1873 the indictment was good. —*State* v. *Kepper*—Filed April 21, 1885.

RAILROAD COMPANY — LIABILITY FOR DAMAGE FROM WANT OF FENCING THEIR TRACK.—Where it ls the duty of a railway company to fence their track and they neglect to do it, they are liable for the killing of swine or cattle running at large, even though the swine are running at large contraly to law.—*Lee* v. *M. & St. L. R. R. Co.*—Filed April 24, 1885,

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PRACTICE—FILING A PETITION TEN DAYS BEFORE THE TERM—EXCLUDING SUNDAY—When the term commenced on the 19th day of December, and the 9th day of December fell upon sunday, a petition being filed on the 29th day of November, a motion was made to dismiss on the ground that it had not been filed ten days prior to the term. *Held* that the statute requiring the last day to be excluded, when it feel upon sunday, applied only when something was required to be done on the last day. In this case, nothing being required to be done it should be included and the motion to dismiss was properly overruled.—*Conklin* v. *Marshalltown.* —Filed April 24, 1885.

SALE—FAILURE TO DELIVER GOODS—MEASURE OF DAMAGES.—Where defendants contracted to deliver 9000 bushels corn within a specified time and only delivered a part, *Held* that in an action for damages the plaintiff was entitled to recover and that the measure of damages was the difference between the purchase price agreed on and the highest price at which it might have been sold between the date when it should have been delivered and the commencement of this action.—*Gilman* v. *Andrews.*—Filed April 24, 1885.

ANTENUPTIAL CONTRACTS — ALLOWANCE TO WIDOW BY PROBATE COURT—Where the probate court construed and affirmed an antenuptial contract and made an order for the payment of money to her in accordance therewith. *Held* that if was error. The enforcement of an antenuptial contract belongs to a court of equity and not the probate court.—*In Re Estate of Collins.*—Filed April 24, 1885.

SALE—WARRANTY—FALIURE TO EXAMINE GOODS.—Where a party purchased a kiln of brick and the seller warrants them "to be good brick and all right," and where the purchaser could not have learned of the bad condition of the brick without going on top of the kiln, *Held* that the purchaser was entitled to rely upon the waranty of the seller, and may offeset a claim for damages for breach of the warranty in an action to recover for the price of the brick.—*Meikley* v. *Parsons*—Filed April 23, 1885.

GAMBLING CONTRACTS—NO INTENTION TO DELIVER GOODS SOLD—NOTE GIVEN FOR MARGINS—VOID.—Parties doing business on

the Chicago Board of Trade purchase provisions upon the order of and for a customer, and the customer gives his note for amount required as margin. The deal being a loosing one to the customer he refuses to pay the note at maturity, and this action is brought to recover. *Held* that as neither party intended that the property purchased should be delivered, but a settlement had only in margins, the contract is illegal and void and no recovery can be had on the note.—*1st Nat. Bank* v. *Oskoloosa Packing Co.*—Filed April 23, 1885.

BAILMENT—DEPOSIT OF MONEY—LOSS-LIABILITY OF BAILEE.—Where money was deposited with Merchants simply for safe keeping and a receipt given for the same, the money being stolen from the safe of the merchants, and an action brought by the depositor to recover payment, it is competent for the bailee to produce evidence that he held it only for the accommodation of the owner.—*Keen* v. *Beekman.*—Filed July 22; 1885.

RAILROAD COMPANY—INJURY TO EMPLOYE—NEGLIGENCE OF CONDUCTOR.—Where the conductor of a freight train failed to give the usual signal to the engineer when passing a station, the engineer in looking out for the signal, was struck by an attachment to a wather-tank and was killed. *Held* that the company was not liable, as the negligence of the conductor was not the proximate cause of the accident.—*Gould* v. *C. B. & Q. R. R. Co.*—Filed July 22, 1885.

RAILROAD COMPANY—INJURY TO EMPLOYE—LIABILITY OF COMPANY.—Where a brakeman about to uncouple cars in a moving train, was struck by a post which had been erected by the station agent for his own use, and of which the brakeman had no knowledge and was injured, it is *held* that the company was liable, as it was guilty of negligence in allowing the post to remain there. *Kearns* v. *C. M. & St. P. R. R. Co.*—Filed July 22, 1885.

RAILROAD COMPANY — RIGHT TO EXCAVATE AND REMOVE SAND FROM THE RIGHT OF WAY.—Where land has been deeded to the company for a right of way and "for all purposes connected with the construction, use and occupation of said railroad," the company is not authorized to take sand therefrom for the purpose of building a round house without compensating the owner there for. Where a meadow is destroyed by fire started through the negligence of a railwaycompany, they are liable to the owner for the damages. The measure of damages is the amount of actual damage sustained. — *Vermilya* v. *C. M. & St. P. R. R. Co.*—Filed July 22, 1885.

SUPREME COURT OF KANSAS.

OBLIGATION OF RAILROAD COMPANY TO FENCE THEIR TRACK—WHEN RELEASED FROM THE OBLIGATION.—A railroad company will be released from obligation to fence their track, where some paramount interest of the public intervenes, rendering it improper to fence the road, but no private interest will relieve them of the duty.—*A. T. & S. F. R. Co.* v. *Shaft.*—Filed May 8, 1885.

CRIMINAL LAW—CHARGING TWO OR MORE FELONIES IN ONE INDICMENT.—Two or more felonies may be joined in one indictment but they mustbe in separate counts. Where the defendant was charged with taking away a female under 18 years of age, from her father for the purpose of prostitution, there is a, joinder of two distinct offenses in one count, and the indictment is not good.—*State* v. *Goodwin.*—Filed May 8, 1885.

SALE IN FRAUD OF CREDITORS—VENDEE'S KNOWLEDGE OF THE TENDOR'S INSOLVENCY—FRAUD IS NOT PRESUMED.—Where an effort is made to set aside a sale on the ground of fraud, the mere fact that the vendee had knowledge that the vendor was largely in debt, will not vitiate the sale, although the vendor may have intended the

sale in fraud of his creditors. Fraud will not be presumed; it must be proven by competent evidence, and the burden of proof rests upon those assaling the validity of the transfer.—*Baughman* v. *Penn.*—Filed May 8, 1885.

MUNCIPAL CORPORATION—LIABILITY FOR INJURY—SIDEWALKS KNOWN TO BE OUT OF REPAIR.—The fact that a person travelling on a street knows that the sidewalk is out of repair, does not bar his right to recover for an injury sustained by reason of the bad condition of the sidewalk. He is required however to exercise care commensurate with the circumstances and avoid danger if possible, but he is not bound to keep off the street because of the bad condition thereof. Incorporated cities are bound to keep their streets and sidewalks in reasonably good and safe condition.—*Emporia* v. *Schindling.*—8, 1885.

SUPREME COURT OF MICHIGAN.

PRACTICE — PROBATE COURT — FILING CLAIM AFTER THE LIMITATION OF THE STATUTE HAS RUN.—Where the time limited by statute for filing claims against the estate of a decedent has expired, but where the estate has not been settled and closed up, it is *held* error to deny a motion to revive the commission on claims and allow a petitioner to present his claim against the estate.—*Hart* v. *Judge*—Filed May 6th 1885.

CORPORATION—POWER OF PRESIDENT TO SIGN PROMISSORY NOTE—CONSIDERATION—A partnership bussiness is transfered to a corporation formed for the purpose, and the partners become the principal stockholders in the new corporation, and one of the partners becomes president. After the corporation is duly formed and commenced business the president takes up some notes heretofore made by the firm, which were not yet due, and makes the note of the corporation instead. *Held* that the party taking the corporation notes cannot recover on them, unless he can show express authority of the president to sign said notes.—*McLellace* v. *Detroit File Works*—Filed May 6, 1885.

RAILROAD COMPANY — LIABILITY FOR PERSONAL INJURY.—The plaintiff, a child two and a half years old, goes upon the track and is injured by a passing train. *Held* that a child so young cannot be held to be a trespasser in the sense that will forfeit his right of redress—Further, that it was proper for the jury to take into consideration the fact that the railroad company had failed to fence the track as required by law. The question of the negligence of the parents was a proper question for the jury.—*Keyser* v. *Chicago & G. T. Ry. Co.*—Filed May 6, 1885.

SUPREME COURT OF MINNESOTA.

PRACTICE—BRACH OF CONTRACT—COUNTER CLAIM.—In an action for the breach of a contract, where the defendant pleads a counter claim his plea is a bar to the claim that defendant has not performed the contract. Where it is agreed between the parties to a contract that a third party shall decide when the contract is executed, the *bona fide* decision of that party is binding.—*Trainor* v. *Wouman.*—Filed June 27, 4885.

MISDESCRIPTION IN DEED—DECEASE OF GRANTEE—DEVISE—REFORMATION OF DEED—In the conveyance of 40 acres of land in the deed it was described as the *East* 40 when it should have been the *West* 40. A like mistake was made in the mortgage executed. The mistake is not discovered until after the death of the grantee. In his will a like mistake was made, in which he devised the *West* 40. Upon a hearing, all parties in interest being present, it is ordered that the deed be reformed to conform to the intention of the parties.—*Christman* v. *Colbert.*—Filed July 8, 1885.

SALE FOR TAXES—PAYMENT FOR ALTERNATE YEARS.—Where the taxes on land are

delinquent and the taxes assessed for years subsequent thereto are paid, a sale for the delinquent taxes is not invalidated by the treasurers receipt for the taxes for years subsequent thereto, although the treasurers receipt specify "in full for redemption from all delinquent taxes," for specified years.—*Knight* v. *Valentine.*—Filed July 15, 1885.

HIGHWAY—DEDICATION OF LAND—WHAT CONSTITUTES A DEDICATION.—The requisites of a common-law dedication of land to a public use are an intention to dedicate to such use and acceptance of the same by the public. This intention to dedicate may be shown by the acts of the owner and all circumstances relating thereto may be shown in evidence to establish the fact of the dedication.—*Morse* v. *Zeize.*—Filed July 15, 1885.

PRACTICE — APPEAL—JUDGMENT—QUESTION OF LAW.—The judgment of a court cannot be declared erronous, upon appeal, when the whole case on which the judgment is founded, does not appear to have been returned to the appellate court. When the appeal is upon a question of law, from the probate court, the appeal must be determined upon the record of the proceedings in that court. The judgment cannot be said to be erroneous because not supported by the facts.—*Post* v. *Armstrong*—Filed June 23, 1885.

VENDOR AND VENDEE—RIGHT TO RECOVER UNPAID PURCHASE MONEY.—Where upon a sale of land, it is agreed that the purchase money shall all be paid upon delivery of the deed, and where the vendee pays only part upon delivery of deed and promises the balance "in a few days," this cannot bs construed as making a new contract. The vendor's lien for the purchase money is not vitiated by such indulgence—*Walter* v. *Hanson*—Filed June 23, 1885.

SALE — MEMORANDUM ADMITTED AS EVIDENCE—Where a clerk who makes a sale of goods, and made, or caused to be made, a memorandum of the same, if he is able to verify the memorandnm it may be admitted as evidence as an itemized account of the goods sold.—*Singer* v. *Brockamp*—Filed July 1, 1885.

CONTRACT—CONSIDERATION.—Where the discharge of an employe is made the consideration whereby a party agrees to do a certain thing for a certain amount, the discharge of the employe is a snfficient consideration to support the contract and is not *per se* illegal.—*Gile* v. *Carter.*—Filed July 8, 1885.

SUPREME COURT OF NEBRASKA.

HOMESTEAD — ABSOLUTE DEED CONSTRUED AS A MORTGAGE.—Where an absolute deed is made of a homested for the security of a debt, and an agreement made at the same time that when the debt is paid there shall be a reconveyance to the wife of the debtor, it is *held* to be only a mortgage. Such an agreement will not take away the homestead rights if the family continue in possession of the premises.—*McHugh* v. *Smiley.*—Filed July 7, 1885.

UNITED STATES SUPREME COURT.

SPECIAL AGENTS OF THE U. S. TREASURY—THEIR AUTHORITY TO CONTRACT UNDER ACT OF MARCH 12, 1863.—None but Supervising special agents of the Treasury could bind the goverment in a contract to collect and deliver abandoned or captured goods or property to the government and not more than 25 per cent could be paid an agent for this purpose, without reference to the secretary of the treasury, and no contract with the special agent of the treasury would bind the government unless in writing. Partial payment of a claim not recognized as binding the government for the balance.—*Camp* v. *United States*—Filed March 2, 1885.

IMPAIRING THE OBLIGATIONS OF A CONTRACT—CHARTER OF A CORPORATION—SUBSEQUENT LEGISLATION REGULATING

THEIR BUSINESS.—Where a State has granted a charter to an insurance company and by subsequent legislation intended to regulate insurance companies, in harmony with public policy and good morals, causes thereby some modification of the conditions of the charther theretofore granted, such regulation and modification will not be construded as impairing the contract embraced in their charter, even though such wholesome restrictions cause the company to suspend business.—*Chicago Life Ins. Co.* v. *Needles*—Filed March 2, 1885.

ESTATE OF DECEDENT — VESTED REMAINDER TO GRAND CHILDREN NOT IN BEING.—The statute in Ohio, provides that no estate in lands "shall be given or granted by deed or will to any person or persons, but such as are in being, or to the immediate issue of such as are in being at the time of making such deed or will." An executory devise over of the share of any grand child, who shall have died, leaving children, to the children of such deceased grand child, is *held* valid though born after the testators death.—*McArthur* v. *Scott.*—Filed March 2, 1885.

CONSTRUCTION OF STATUTE — FORCE OF CONTEMPORANEOUS INTERPRETATION.—Where the interpretation of a statute is in doubt the uinform contemporaneous construction ought to govern. Where an officer of the army has submitted his aplication, to the board, to be placed on the retired list, and the board has reported that there was no evidence submitted to show that disability was the result of some incident of the service, justifies an order retiring him with furlongh pay.—*Brown* v. *United States.*—October Term 1884,

REMOVAL OF CAUSE—TIME OF FILING PETITION.—The Revised Statutes Sec. 639 declares that the petition for removal may be filed "at any time before the trial or final hearing of the cause." Where a trial has been had, and the jury disagree the right of removal still remains. The party causing the case to be removed cannot object to the jurisdiction of the Federal Court.—*Ayers* v. *Watson*—Filed March 2, 1885.

FEDERAL COURTS.

REPLEVIN—POSSESSION OF ASSIGNEE NOT POSSESSION OE THE COURT.—Property in the possession of assignee for benefit of creditors under a State law, is not the custody of the law in that sense that the property cannot be seized on replevin issued from another court.—*Lehman* v. *Rosengarten.*—January 26, 1885, C. C. Mich. E. D.

COMMON CARRIERS—SEPERATE CARS FOR WHITE AND COLORED PASSENGERS—MEASURE OF DAMAGES FOR EJECTING A PASSENGER FROM TRAIN.—A railroad company may require colored passengers to occupy cars provided especially for their use, but if they charge the same fare as they do for white people, they must furnish equally as good accommodations.

If the employes on the train suffer a passenger to be ejected from the train by other passengers the company is liable for damages. Where a man enters a car wherein he knows he will not be permitted to ride, having in mind the purpose and intention to get a cause of action against the company for being ejected, that fact may be shown in mitigation of damages.—*Murray* v. *W. & A. R. R. Co.*—April Term 1885.

CRIMINAL LAW—MOTION FOR REMOVAL—QUESTION FOR THE JUDGE.—In acting on a motion for removal, the judge is performing a judicial function and may go behind the indictment. He must inquire where a trial can be had and send the case to a court which has jurisdiction. He may determine whether the party should be held, removed or discharged. In order that the Court may try the case it must have jurisdiction of the person, the place and the subject matter.—*United States* v. *Rogers*—April 27, 1885, D. C. W. D. Arkansas.

HOMESTEAD—BANKRUPTCY—FRAUD-LIMITATION OF ACTION BY ASSIGNEE.—Where a bankrupt has fraudulently claimed certain property as a homestead, and after the fraud is discovered, the assignee brings an action to recover the same, the limitation prescribed will apply and bar the action.—*Leech* v. *Dawson.*—July 28, 1885, D. C. D. Ky.

SALE ON MARGINS—COTTON EXCHANGE—CUSTOM.—A broker who on the New York Cotton Exchange sells cotton held for a customer before maturity of his contract, because the customer does not advance sufficient margin, cannot recover from his customer the loss, if any sustained on the transaction.—*Blakemore* v. *Heyrnan*—April 5, 1885, C. C. D. Ky.

SUPREME COURT OF IOWA.

Williams v. *Dickerson.*

FILED APRIL 24, 1885.

EXECUTION SALE—REDEMPTION—ATTACKING THE VALIDITY OF THE ORDER OF SALE.

In an action to redeem from an execution sale the order of sale cannot be be questioned. Where several notes are given for purchase money of land, and upon default in payment of one or more of the instalments redemption cannot be had without paying the whole amount of the bid.

Appeal from Cass circuit court.

Action in equity to establish plaintiffs' right to redeem certain real estate from a sale on execution. It is alleged in the petition that one Theodore Johnson purchased ofdefendants a certain 80-acre tract of land, and agreed to pay them therefor the sum of $1,320, and that he gave them therefor his five promissory notes falling due at different times, and that they gave him a title-bond, whereby they bound themselves to convey said land to him on the payment of said notes. It is further alleged that said Johnson afterwards sold said land to plaintiff, and assigned said title-bond to him. Also that default being made in the payment of one of said notes, (the one first falling due,) defendants brought suit thereon and recovered judgment for $280,60, and for the foreclosure of said contract and the sale of the premises on special execution; and that special execution issued on said judgment, and said land was offered for sale thereon, and that defendants bid for the whole of the land the sum, of $1,587,30, and the same was struck off to them for that amount, and a certificate of purcase given them therefor by the sheriff, but that they had not paid any portion of said amount into court, except a portion of the costs of procedings. It is also alleged that said land is divisible and could have been sold in parcels for the satisfaction of said indebtedness, and that plaintiff is ready and willing to pay the amount of said judgment, with the interest and costs thereof, but that defendants refused to accept the same in redemption of the land from said sale. And the prayer is that defendants be compelled to accept said amount in redemption of said land, and that the sheriff be directed to excute a deed conveying the land to plaintiff; and that it be adjudged to be free and discharged from the lien of said contract, or, if it shall be determined that he is not entitled to redeem by paying that amount, that the sale be set aside and declared void, and a resale of the premises ordered. A demurrer to the petition was sustained, and plaintiff, declining to plead further, judgment was entered dismissing his petition, from which he appeals.

John Hudspeth, for appellant.

Temple & *Phelps*, for appellees.

REED, J. By seeking to redeem the premises plaintiff concedes, inferentially at least, that the sale is valid. The right to redeem from an execution sale is given by the statute to enable the party by that means to preserve some right or interest in the property which, but for that right and its exercise, would be divested by the sale, The right of redemption given by the statute can be exercised only after the property has been sold, and as the right is purely statutory, a court of equity will establish the right of a party to exercise it only in case the conditions exist under which, the provisions of the statute, the right arises. Plaintiffs' right, then, is to redeem the land from the sale. But a redemption can be made only on the

terms precribed by statute. It is provided by section 3106 of the Code that "the terms of redemption in all cases will be the reimbursement of the amount paid by the then holder, added to the amount of his own lien. * * *" This section prescribes the terms upon which the redemption must be made, whether it is sought to be made from the purchaser at the sale, it can be made only by the reimbursement of the amount paid by him in the purchase. The amount of the judgment on which the execution issued by virtue of which the sale was made was $280.60, Defendants bid $1,587.30 for the property, and it was struk off to them at that price, and a certificate off purchase was issued to them by the sheriff. Plaintiffs' offer is to pay the amount of the judgment, and he claims the right to redeem the land by paying that amount. His position is that, as defendants have paid no portion of the amount bid by them into court, the sale operated simply to satisfy the amount of the judgment and costs; hence that is the amount paid by them, and the redemption may be effected by reimbursing them that amount.

We think this position is not maintainable. The judgment in the foreclosure proceeding directs the sale of the premises on special execution, and it provides that the proceeds of the sale shall be applied in satisfaction of the amount of the judgment and costs, and that any balance thereof shall be applied in satisfaction of the notes which are not yet due. A sale of the land for an amount simply sufficient to satisfy the judgment would have operated to defeat the lien which defendants had under the contract for the security of that portion of the parchase price which was evidenced by the notes not yet matured. *Poweshiek Co.* v. *Dennison*, 36 Iowa, 244; *Escher* v. *Simmons*, 54 Iowa, 269; S. C. 6 N. W. Rep. 274.

It was to their interest, then, that the land should sell for an amount sufficient to satisfy the whole of the indebtedness, and they clearly had the right to bid it in for an amount sufficient to do this. Their bid, then, was an offer to take the land at $1,587.30. The sheriff accepted that offer, and issued to them a certificate of purchase. The parties to the sale treated it as a sale at that price. Defendants never consented to a sale of the property for an amount merely sufficient to pay their judgment; nor did they become parties to a sale for that amount. If plaintiff redeems the property, the redemption must be from the sale which was actually made. To permit him to redeem by paying the amount of the judgment merely would be to permit a redemption on terms materially different from those upon which the law provides it shall be made. The court cannot do this.

2. We think also that the facts stated in the petition do not afford a grouud for setting aside the sale. The judgment in the foreclosure proceeding directs the sale of the land as an entirety. The court in that proceeding might have ordered the sale of an amount sufficient merely to satisfy the judgment; but this was not done. If it be conceded that the order made is erroneous in this respect, it cannot be questioned in this proceeding. Plaintiff was a party to the foreclosure suit, and he is bound by the judgment and orders entered therein. The order sustaining the demurrer to the petition is right. The judgment therefore will be affirmed.

NEW YORK COURT OF APPEALS.

MARRIAGE SETTLEMENT—MAY BE ESTABLISHED BY ANTENUPTIAL CORRESPONDENCE. —The forfeiture of a pension by a soldier's widow, by her second marriage, is a sufficient consideration for a marriage settlement and the settlement may be established by antenuptial correspondence. Where a marriage settlement is established an action may be maintained by the widow for her portion before the estate of her deceased husband is fully settled.—*Peck* v. *Vandemark*—Filed April 14, 1885.

FIRE INSURANCE—MORTGAGE CLAUSE IN POLICY—REMOVAL.—Where an insurance

policy contains a mortgage clause, providing that the mortgagee's interest shall not suffer by reason of any negligence or default of the mortgagor, an increase of the hazard during the life of the policy by the mortgagor in violation of the conditions of the policy. will not affect the rights of the mortgagee. If the policy be renewed without giving the company notice of the increased hazard it is otherwise.—*Cole, assignee* v. *Ger. Fire Ins. Co.*—Filed April 14, 1885.

PRACTICE—EXISTENCE OF CORPORATION—HOW ESTABLISHED.—Where a corporation files a petition to condemn lands, the existence of the corporation is sufficiently established by an allegation to that effect, by the petitioners, and the burden of proof is on him who denies its existence. The lands of a private coporation is not exempt from the law of eminent domain—*N. Y. L. & W. R. Co.* v. *Union S. B. Co.*—Filed April 14, 1885.

SUPREME COURT OF OHIO.

PAYMENT BY A WORTHLESS DRAFT—NO DEFENCE IN ACTION FOR THE DEBT.—Where a party remitted in payment of a bill, a draft made by one bank upon another, and the bank making the draft fails before it is presented for payment, *Held* that in an action for the debt a plea of payment cannot be maintained as a defense.—*Fleig* v. *Sleet.*—Filed March 10, 1885.

CRIMINAL ASSAULT—DRUNKENNESS AS A DEFENSE.—Intoxication may be admitted sometimes as showing the degree of the crime although it is not of itself a defence. Where defendant is charged with a criminal assault, it is competent to show that he was intoxicated in such a degree that it was impossible for him to commit the offense as charged.—*Clim* v. *State.*—Filed June 16, 1885.

CONSTRUCTION OF STATUTE—IMPOUNDING OF ANIMALS—REPLEVIN.—In construing a statute, punctuation may aid but does not control, and may be wholly disregarded.

On the trial of replevin for animals impounded, where there is no record as to the action of the trustees, parol testimony may be admitted as to whether there is such a pound.—*Albright* v. *Payne.*—Filed Feby. 24, 1885,

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MUTUAL BENEFIT SOCIETY—DESIGNATION OF STRANGER AS BENEFICIARY.—Where a certificate of membership contains a clause providing that it shall be payable to him or "to any person designated by his will or his heirs" does not authorize such member to constitute any one outside of his heirs the beneficiary under the certificate by testamentary appointment.—*National M. A. A.* v. *Gonser*—Filed Feb. 24, 1885.

PRACTICE—BILL OF EXCEPTIONS—WHEN MANDAMUS WILL LIE TO COMPEL JUDGE TO SIGN.—Where during the progress of a trial, the party taking exceptions to the ruling of the court, consents to allow the trial to proceed without having his bill of exceptions signed, he is entitled to have them signed within 30 days after the close of the term, and mandamus will lie to compel the Judge to sign it if the exception is true.—Supreme Court of Ohio, Feb. 24, 1885.—*Ottenberger* v. *Hawes.*

SUPREME COURT OF IOWA.

Hughes v. *Wheeler.*

FILED JULY 22, 1885.

CHATTLE MORTGAGE—SUFFICIENCY OF DESCRIPTION—AFTER ACQUIRED PROPERTY—PROPERTY MUST BE IN EXISTENCE AT THE TIME MORTGAGE IS MADE.

APPEAL from Hancock circuit court.

Action for damages alleged to have been sustained by the plaintiff by reason of the taking of a certain mare from his possession. There was a trial to a jury, and verdict and judgment were rendered for the plaintiff. The defendants appeal.

Glass & *Hughes*, for appellants, J. S. Wheeler and another.

Stanberry & *Clark*, for appellee, Patrick Hughes.

ADAMS, J. The mare at one time was the property of one Perry. The plaintiff claims to have derived title and right of possession as a purchaser either directly from Perry or through one Williams. The defendant Wheeler claims title and right of possession under a mortgage from Perry. The defendant Hotchkiss claims to have acted merely as the agent of Wheeler in assisting him to gain possession of the mare under the mortgage. The question raised is as to whether the description of the property mortgaged is sufficient to enable the mortgagee Wheeler, to hold the mare as against the plaintiff. The court below held that it was not, and in effect so instructed the jury.

The mortgage was executed in 1882. It is undisputed that the mare was acquired by Perry after that time. But the mortgage was drawen with the intention of covering after-aquired property. After describing certain personal property, including three mares, it contains in the description these words: "Also all stock I may own during the existence of this mortgage."

The plaintiff alleges in his petition that the mare is about 10 years old. At the time, then, that the mortgage was executed the mare was in existence. That a mortgage may be so drawn as to cover after-aquired property, if in existence at the time the mortgage is executed, is not denied, and could not be properly. *Scharfenburg* v. *Bishop*, 35 Iowa, 60; *Fejavary* v. *Broesch*, 52 Iowa, 88; S. C. 2 N. W. Rep. 963; *Stephens* v. *Pence*, 56 Iowa, 257; S. C. 9 N. W. Rep. 225; *Beall* v. *White*, 94 U. S. 382; *Arques* v. *Wasson*, 51 Cal. 620.

The question before use, then, pertains to the sufficiency of the description of the property as after-aquired property. The plaintiff claims that the description is void for uncertainty; but it is difficult to see how a mare, thereafter to be acquired, could be more certainly described. Such an animal comes under the denomination of *stock* within the strictest meaning of the word, and the words *all the stock I may own* are as certain as any words that could be used. Where the description in a mortgage is insufficient it is so because it does not sufficiently distinguish the property from other property owned by the mortgagor.

Muir v. *Black*, 57 Iowa, 662, S. C. 11 N. W. Rep. 621, is relied upon by plaintiff. In that case the description was held insufficient. It was in these words: "All the crops raised by me in any part of Jones county for the term of three years." But the mortgagor might have grain or other crops acquired by purchase, or crops raised elsewhere within the time specified, or crops raised in Jones county before or after the time. Harvested crops are, in the usual course of farming, to be taken from the field where raised, and their history is liable to become uncertain. This is true to some extent even in the case of a single crop raised in a single field definitely described. But the difficulty is greater if the description is intended to cover crops raised in more that one year and on more than one field not difinitely described, and still not designed to cover necessarily all the mortgagor's crops. Where the mortgage is designed to cover all the mortgagor's property of a certain denomination there is no question of distinguishment. There may, it is true, be an uncertainly as to whether the property belongs to the mortgagor. But no question of that kind can be raised by the subsequent purchaser or creditor, because he claims under the mortgagor and assumes that the property in question was owned by him. He assumes the essential fact necessary to bring the property within such a description as that under consideration. In our opinion, then, the description in question is sufficient, and the court erred in holding that it was not.

Some other questions are discussed, but in the view which we have taken they will not probably arise upon another trial.

Reversed.

LIABILITY OF OWNER OF ANIMAL NEGLIGENTLY PERMITTED TO BE AT LARGE.

MARYLANDS COURT OF APPEALS.

March 29, 1883.

Annapolis and Elkridge Railroad Company v. *Baldwin.*

Where the cars of a railroad company were thrown from the track by a collision with the defendant's ox, which was at the time on the track through the negligence of defendant, the company not being negligent, HELD, that defendant was liable for the injury.

APPEAL by plaintiff from the judgment of the court below sustaining a demurrer to his declaration, filed by the defendant. The case is stated in the opinion.

Phil. H. Tuck and *William H. Tuck*, for appellant.

Edward C. Gantt and *Frank H. Stockett*, for appellee.

ROBINSON, J. The second and third counts in the declaration allege that the plaintiffs' engine and cars, while making one of their regular trips between Annapolis Junction and Annapolis, were thrown off the track and greatly damaged from a collision with the defendant's ox, which was, at the time, on the track through the negligence of its owner, and that said collision occured without any negligence or want of care on the part of the company or its agents..

The demurrer admits the facts thus averred, and the question is, whether upon this concession, the defendant is liable for damages.

This is the first case in this court in which a railroad company has sued the owner for damages resulting from a collision with stock trespassing on its road; but upon the concession of the defendant we do not see on what ground he is to escape liability.

The injury, it is argued, is too remote. In actions of this kind the damage, it is true, must be the direct consequence of the defandant's negligence. In other words, as it is put in the books, the negligence must be the proximate cause of the injury. But here the plaintiff was entitled to the unobstructed use of its road, and the defendant admits that his ox was upon the track through his negligence, in consequence of which the plaintiffs cars and engine were thrown off the track and damaged. The injury then was the direct result of the defendant's negligence. If negligence is once admitted or established, it is no answer that the defendant did not foresee the injury, or that the damage was greater than he anticipated. Suppose the defendant could not have foreseen that the ox would be upon the track at the time the plaintiff was making one of its regular trips, and did not anticipate the engine and cars would be thrown from the track, even if a collision did occur. That is no answer. In point of fact the ox was upon the track, and there too through the defendant's negligence, and the engine and cars were thrown off the track by the collision. The injury was the direct result of the negligence, and if so, the defendant was clearly liable.

This however is not a case of first impression. In other States where the question has arisen, the courts have uniformly held the owner liable for damages resulting from a collision with stock trespassing on a railroad track through the negligence of the owner. *Housatonic R. Co.* v. *Knowles*, 30 Conn. 313; *Hannibal and St. Jo. R. Co.* v. *Kenney*, 41 Mo. 272; *Sinram* v. *Pittsburgh F. W. and C. R. Co.*, 28 Ind. 244; *Railroad Co.* v. *Skinner*, 19 Penn. St. 298-304 and *Drake* v. *Pittsburgh and E. R. Co.*, 51 id. 240.

The English decisions in actions of negligence fully sustain, we think, this view. In *Child* v. *Hearn*, L. R., 9 Exc. 176, the plaintiff, in the employment of a railroad company, was returning from his work along the line upon a trolley propelled by hand and ran over the defendant's pigs which had escaped from the defendant's land, the trolley was upset and the plaintiff injured. In an action of damages by the plaintiff against the owner of the pigs, it was held the owner was not liable because the proof showed that the pigs escaped through a defect in the fence, which belong to the company, and which it was the duty of the company to keep in repair. The liability of the defend-

ant was not however questioned, if the pigs had in fact escaped from his land through his negligence.

So in *Lee* v. *Riley*, 18 C. B. (N. S.) 722, where the plaintiff's mare strayed into an adjoining close through defect in a fence which it was the duty of the defendant to keep in repair, and while there kicked and injured the plaintiff's horse, it was held the defendant was liable.

And in *Powell* v. *Salisbury*, 2 Y. & J. 391, where the plaintiff's horse escaped into the defendant's close through a defective fence which it was the duty of the defendant to keep in repair, and was killed by the falling of a haystack, it was held, even in such a case as that, the damage was not too remote.

And then again, in the still later case of *Lawrence* v. *Jenkins*, L. R. 8 Q. B. 274, where the plaintiff's cow escaped upon the defendant's land, through a fence which the defendant was bound to keep in repair, and while there ate the leaves of a yew tree, in consequence of which the cow died, the defendant was held liable for the damage.

In all these cases the court held the injury to be the consequence of the defendant's negligence, and such being the case he was liable.

The first count presents quite a different question. It merely alleges that the ox was trespassing upon the the road, and does not allege that it was trespassing through the the negligence of the defendant. Every one, it is true, is obliged to keep his stock within his inclorures, and if they escape upon the land of another, whether through the negligence of the owner or not, and tread down the grass or destroy the crops, the owner is, in an action of trespass, liable for the damage. The common law, which requires every one to keep his stock within his own bounds at his peril, is the law of this State. But this is not an action of trespass to recover for direct and immediate injuries resulting from an estray. It is an action on the case for consequential damages resulting from the estray. And to entitle the plantiff, in such an action, to consequential damages, he must allege and prove that the injury was the result of the defendant's negligence. If the ox escaped from his inclosures without the knowledge and without any fault of the defendant, we are of opinion he would not be liable in this action for consequential damages.

There can be no reason for extending the rigorous rule of the common law, which holds the owner liable in action of trespass, whether his cattle escape through negligence or not, to an action on the case by a railroad company seeking to recover censequential damages. It is the privilege of such companies to invade every one's property, and build and construct their road wherever they may see fit, and to do so in this State, without being obliged to erect and maintain fences along the line. Even with the best care cattle will sometimes escape from inclosures, and to hold the owner liable for damages, where the escape is without his fault or negligence, would be to subject every one along the line of a railroad to the peril of being ruined, and ruined too, without any fault on his part.

For these reasons demurrer to the first count ought to have been sustained, and overruled as to the second an third counts in the declaration.

Judgment reversed, and new trial awarded

SUPREME COURT OF MINNESOTA.

OPINION FILED JULY 8, 1885.

Bennett, Assignee etc., v. *Denny.*

Appeal from an order of the District Court, Ramsey County.

INSOLVENCY—FRAUDULENT INTENT OF THE ASSIGNOR.

The fradulant intent of the assignor does not involidate the assignment. The Court will take charge of the property and administer it for the benefit of the creditors.

BERRY, J.—The holding of this court (*In re* man, 32 Minn. 60; S. C. 19 N. W. Rep. 347) that an assignment under an insolvent law is not invalidated by the fraudulent intent of the assignor, has recently been followed and sanctioned in *Simon* v. *Mann*, 19 N. W. Rep, 347, and we see no occasion

to re-examine it. In the case at bar fraud is charged upon the assignee as well as the assignor, and in that particular the defendant claims that it differs from *In re* Mann. But we agree with the trial court that the difference is unimportant. and that the principle of *In re* Mann is applicable to fraud of assignee also.

The considerations presented in the opinion in that case, except such as relate to the criminal or penal liability of the assignor, are entirely applicable to fraud of the assignee; and in addition to what is there said it is to be observed that, by section 9 of the insolvent law, the court in which the assignment may be said to be pending, is authorized "for any proper cause" to remove an assignee and appoint another in his stead, and is required to *order* a removal upon the vote of two thirds in number and amount of the creditors. This provision appears to be based upon the idea that the assignment may be made to an incompetent, dishonest or otherwise unfit assignee, and that nevertheless the assignment shall stand, and the property be distributed among the creditors under it.

It is also said that this case is distinguished from *In re* Mann by the fact that here the attachment upon which the assignment was based was collusive and fraudulent. Whether there is any way in which fraud, in such an attachment, can be taken advantage of to upset an assignment, we need not now inquire. Certainly the attachment gives the District Court jurisdiction of the assignment, and that jurisdiction can not be attacked collaterally, as is attempted to be done in this instance. It remains to consider the effect of the action of the Federal Circuit Court.

It seems that, prior to the making of the assignment in question, the defendant, as United States marshal, by virtue of process of the Circuit Court, had attached the assigned property. The plaintiff (the assignee) made application to the Circuit Court to be permitted to intervene in the action in which the attachment issued, and to become a party defendant therein, and for the dissolution of the attachment. Upon a hearing, leave to intervene and become a defendant was granted, but the motion to dissolve the attachment was denied. It is contended by defendant, if we understand him, that the order refusing to dissolve the attachment was a species of judgment in favor of his right to hold the goods attached under the writ of attachment, and that the plaintiff, having become a party to the proceedings in the Circuit Court, can not proceed against the marshal for the conversion of the assigned property while the attachment is undissolved.

The contention over-estimates the force and effect of the order refusing to dissolve an attachment. It was merely "the decision of a motion or summary application," which "is not to be regarded in the light of *res adjudicata*, or as so far conclusive upon the parties as to prevent their drawing the same matters in question again in the more regular from of an action:" *Kanne* v. *Minneapolis & St. L. Ry. Co.* 23 N. W. Rep. 854. It was a decision, not upon a right of property, but upon the question whether, upon the facts before the court, an attachment should be dissolved. Becoming a party defendant to the suit in the Circuit Court, the plaintiff probably put himself in a position to contest the existence of the cause of action which was the subject of that suit. But that subject was not whether the attachment was valid and proper or not, or where the right of property in the attached goods was. These questions he was at entire liberty to raise and litigate in any other proper tribunal.

So far as we are able to discern, these views are in entire harmony with *Buck* v. *Colbath*, 3 Wall. 334, relied upon by defendant.

Order denying new trial affirmed.

Merrick & Merrick and *A. L. Levi*, for respondent, Chas. C. Bennett, assignee, etc.

C. D. O'Brien, for appellaet H. R. Denny.

SUPREME COURT OF PENNSYLVANIA.

OPINION FILED JUNE 11, 1884.

GREGORY'S APPEAL.

One who purchases the interest of a partner in the personal property of affirm, at Sheriffs sale aquires only the right to an accounting and not to possession and before he is entitled to any part of the property the firm debts must be paid.

Appeal from the decree of the Court of Common Pleas of Huntingdon County.

PAXSON, J.—This contention arises from the distribution of the fund in the hands of the receiver of the firm of B. Green & Co., raised by him from the sale of partnership property of said firm.

The auditor, after allowing certain claims for fees, costs, expenses, rent, etc., which are not disputed, distributed the balance in the hands of the receiver, first, to certain executions against the firm which had been stayed by order of court, the lien of which had been preserved by said order, and second, to the general creditors of the firm *pro rata*. To this distrubution the appellant excepted in the court below, and her exceptions having been dismissed there she has appealed to this court.

The firm consisted of Barton Green and Lewis L. Gregory. Green excuted an assignment of his individual property for the payment of his individual creditors. The deed of assignment makes no mention of partnership property or partnership debts. The most that can be claimed for it as respects the partnership, is that it passed his interest therein subject to the debts of the firm. Certain executions were then issued against Lewis L. Gregory by his individual creditors. These executions were restrained by the court below to his right, title and interest in the firm, and nothing more was sold thereunder. Afterward. upon a bill in equity filed by the assignees for creditors of Green, the court appointed a receiver, who took possession of the partnership property and assets, the proceeds of which are now being distributed.

The appellant has no ground on which to claim the *corpus* of the partnership property or its proceeds. The purchaser at a sheriffs' sale of the interest of a partner in the personal property of the firm, is not thereby entitled to take possession of any portion of the property. All he acquires is the right to an account, and he is not entitled to anything until the firm debts are paid: Durborrow's Appeal, 3 Norris, 404.

The appellant bought the interest of Gregory for $50. What she paid would go to the execution under which the interest was sold. What she bought was the right to any proceeds of the partnership property after the firm debts were paid. Green, the other partner, has an equity, which forbids the application of his share of the firm property to the payment of his partner's individual debts. It is said, however, that Green may waive this equity. If we concede this it does not help the appellant. There has been no such waiver, on the contrary, Green's assignees are in court, and have filed a bill to prevent such an application of the firm property.

A voluntary assignee stands upon the same footing as his assignor. The object and legal effect of the assignment, so far as it affects the partnership, was to pass the assignors interest in the firm, after the payment of the firm's debts, to his individual creditors. The assignee has the same right to enforce the equities of the assignor that the latter would have if no assignment had been made. The case does not require elaboration.

The decree is affirmed and appeal dismissed at the cost of the appellant.

Messrs. R. B. Petriken and *W. H. Woods*, for appellant.

Messrs. R. M. Speer and *John M. Bailey, contra.*

AFFIDAVITS OF JURORS.—The London *Law Times* in referring to the practice of receiving the affidavits of jurors, says: On a recent motion for a new trial, before Lord Coleridge and Mr. Justice Butt, a point of practice was incidentally decided, which, so far as we remember, has not been presented to the courts for many years. In support of the motion an affidavit was

tendered, made by some or all of the jury, and stating that in giving their verdict they had misapprehended the issue before them. The court unhesitatingly refused to admit the affidavit, on the ground that a jury can not be heard to impugn their own verdict. If the precedents of the last century are worth anything under our modern practice, there can be no doubt that this decision was correct. The authority chiefly referred to was *Clark* v. *Stevenson* (2 W. Bl. 803). The facts of this case are not strictly in point, for all that was relied on there as the ground for a new trial was an answer given by one or two of the jury in reply to a question put from the bench after the verdict had been given, the tendency of this answer being to show that the jury had gone against a very clear direction of the judge as to the issue before them.

A case rather more to the purpose, though it was not a motion for a new trial, would be that of *Jackson* v. *Williamson* (2 T. R. 281). where the whole jury made an affidavit that in giving a verdict for the plaintiff for £30 they imagined he could get £60 in all, to which amount they considered him entitled. A principle of very wide application as regards cases of this kind is laid down in *R.* v. *Woodfall* (5 Burr. 2661), the "Junius" libel case. Lord Mansfield there says that, though in the cases of doubt as to what passed in giving the verdict, the affidavits of jurors may be read on a motion for a new trial, yet "an affidavit of a juror never can be read as to what he then thought or intended." Lord Mansfield's language on this subject suggests that he would have taken anything but kindly to the modern practice of jurymen writing to the newspapers in defense or explanation of their verdict.

SUPREME COURT OF WISCONSIN.

CONTRACT—EVIDFNCE—MODE OF PROOF—A contract for services rendered, may be established by acts and conduct of the parties. Where the parties are each entitled to equal credit and their testimony is in conflict surrunding circumstances must be resorted to find to out the facts.—*Emerson* v. *Duran.*—Filed June 24, 1885.

CONTRACT—ACCOUNTING—COST.—In actins for an accou nting the costs are largely within the discretion of the trial court, and its ruling upon such question will not be disturbed by an appellate court unless it is plainly shown that injustice has been done. —*Corrier* v. *Atwood.*—Filed June 1, 1885.

SCHOOL DISTRICT—POWER OF THE SCHOOL BOARD.—The School Board has no power to build a school house and make it a charge upon the district. The district must provide funds for the purpose before the board has the right to build. The power to build is vested in the citizens of the district, and must be determined at a district meeting.—*Nevill* v. *Clifford*—Filed June 1, 1885.

LICENSE FEE—EARNINGS OF RAILROAD. The rules in constructing statutes for assessing taxes should be the same as those imposing license fees. Such statutes should be construed strictly against the government. If the terms of the statute are ambiguous, that should be taken which imposes the lightest burden.—*State* v. *McFetridge*—Filed June 24, 1884.

MUNICIPAL CORPORATION—DEFECTIVE SEWER—DAMAGES.—A city government is not bound to construct culverts to protect property which is below grad, yet if by reason of sewers filling up and thereby damaging property the city is liable for damages although the property is below grade. —*Gilluly* v. *City of Madison.*—Filed June 24, 1885.

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Oakwood see Danville.
Oconee, see Shelbyville
Oblong, See Robinson.
Omaha. See Shawenetown.
Odell. See Pontiac.
Onarka, See Watseka.
Oregon. see Polo.
Otterville, See Jerseyville
Ottawa, Blanchard & Blanchard.
Otterville, see Jerseyville
Owaneco, see Taylorville.
Palmer, see Taylorville.
Pana, see Taylorville.
Paxton, John H Moffett
Paris, Jos. C. Ficklin
Palestine. See Robinson.
Parish, See Benton,

Peoria, NICHOLAS ULRICH.

Princeville, See Peoria.
Pecatonica, See Rockford.
Perry. see Pittsfield
Piper City see Paxton.
Pittsfield. Orr & Crawford
Polo, John D. Campbell,
Pomona, See Murphysboro.
Pontiac. C. C. Strawn.
Poplar Grove, see Belvidere
Prophetstown, see Sterling.
Princeton, W. A. Johnson
Quincy, W. W. Berry.
Rankin. See Danville.
Raymond, See Litchfield.
Reynolds, see Rock Island.
Ridge Farm, See Danville.
Ridgeway, see Shawneetown
Robinson, Robb & Bradberry.
Roberts See Paxton.
Rochelle, see Polo.
Roanoak, see Metamora.
Rock Falls, See Sterling.
Rockton. See Rockford.
Rockford. C. M. Brazee.
Rock Island. E. E. Parmenter
Round Grove, See Sterling.
Rossville, See Danville.
Roseville, see Monmouth.
Rockport, see Pittsfield
Rushville, and all towns in Schuyler Co. } J. C. Bagby.
Sandwich, see Sycamore
Saybrook, See Bloomington.
Scotland, see Paris
Shawneetown, Bowman & Pillow.
Sheldon. See Watseka.
Shelbyville. Moulton, Chafee & Headen.
Shumway, see Effingham.
Sigel, see Shelbyville
Smithfield see Canton.
Somanauk, see Sycamore
South Elgin. see Elgin.
Springfield, Geo. A. Sanders.
Spring Garden, See Benton.
St Anne, see Kankakee
St. Charles. see Elgin.
St. Jacob's, see Edwardsvill.
Staunton, See Carlinville.
Sterling. J. & J. Dinsmoor.
Stewardson, See Shelbyville.
Strawn, See Pontiac.
Streator, see Ottawa.
Stork, see Toulon
Stanford, See Bloomington.
Sullivan, A. C. Mouser,
Sublette, See Dixon.
Summit, See Sullivan.
Sunbeam, See Aledo.
Sycamore, Jones & Bishop
Table Gove see Canton.
Taylorville, J. C. McBride.
Tuscola. A. C. Ficklin.
Thompsonville, See Benton.
Tiskilwa, seePrinceton
Toulon. J. H. Miller.
Tower Hill, see Shelbyville
Urbana. Thomas J. Smith.
Vermillion, see Paris
Vermont see Canton.
Viola, See Aledo,

Wa n, see Kankakee,
Warren, see Galena.
Warsaw, see Nauvoo.
Washburn, see McNamora.
Waseka, Kay & Kuns.
Walshville. See Litchfield.
Wat rman, see Sycamore.
Waverly, s e Jacksonvi le..
Wellsville see Danville.
Woodson, see Jacksonville
West Jers y, see Toulon
White Heath, see Mont cello.
Windsor, See Shelbyville.
Wilmington. J. W. Merrell.
Wyoming, John E. Decker.

INDIANA.

Adams, see Greensburg.
Adaville. See Monticello.
Alamo, see Crawfordsville.
Albany, see Muncie.
Alexandria, See Anderson.
Ambia, see Fowler.
Angola. Emmett A. Bratton.
Arthur, see Petersburg.
Augusta, see Petersburg.
Aurora see Harrison, Ohio.
Argos, see Plymouth.
Arlington. See Rushville.
Barnettsville, See Monticello
Batesville, see Greensburg.
Barbers' Mills, see Bluffton
Battle Ground, see Lafayette
Bedford, Robert N. Palmer.
Berne, See Geneva.
Bluffton, | Wilson, Todd & Dugley.
Bloomington, John Graham.
Boonville. see Evansville,
Bowling Green, see Brazil.
Brazil, McGregor & Compton.
Boswell, see Fowler.
Bourbon, see Plymouth.
Boyleston, see Frankfort.
Bremen, see Plymouth.
Bicknell, see Vincennes.
Bristol, See Elkhart.
Brookston, See Monticello.
Brownsburg, See Danville.
Brookville see Harrison Ohio.
Brooklyn, see Martinsville
Buceville, see Vincennes,
Brunswick, See Crown Point
Bryansville see Bedford.
Bryant, See Geneva.
Buel City, See Sullivan.
Burlington, see Kokomo.
Butler O. L. Young.
Cadiz, see New Castle.
Camden, See Portland.
Carbon, see Brazil.
Chrisney, see Rockport.
Clay City, see Brazil.
Carlisle, See Sullivan.
Carthage, See Rushville.
Churubusco, see Col. City.
Carksburg, see Greensburg.
Clinton, see Newport.
Cloverdale, see Greencastle.
Coatesville, See Danville.
Coesse, see Columbia City.
Columbus. Charles S. Baker.
Colfax, see Frankfort.
Columbia City, Marshall & McNagny.
Connersville see Harrison, Ohio.
Crawfordsville, L. J. Coppage
Creston, See Crown Point
Crown Point, Griffin & Son.
Dana, see Newport.
Darlington, } see Crawfordsville.
Dayton, see LaFayett
Decatur, Peterson & Huffman
Delphi, John C. Odell.
Dugger, See Sullivan.
Dunkirk, See Portland.
Duer, See Crown Point.
Earl Park, see Fowler.
Eaton, see Muncie.
Edwardsport, see Vincennes
Elkhart, | Orville T. Chamberlain.
Elwood, See Anderson.
Ellettsville see Bloomington.
Edinburg, see Columbus.
Eminence, see Martinsville.

Evansville.
CHAS. L. WEDDING.

Eugene, see Newport.
Fairbanks, See Sullivan
Falmouth, See Rushville.
Farmland, See Winchester.
Farmersburg, See Sullivan.
Fayettesville see Bedford.
Filmore see Greencastle.
Fort Wayne, } James. M. Robinson.
Fowler, Geo. Wadsworth.
Francesville, see Knox.
Frankfort, Joseph C. Suit.
Frankton, See Anderson.
Frelandsville, see Vincennes.
Fremont, see Angola.
French Lick, see Paoli.
Galveston, see Logansport.
Geneva, Tharp & Drew.
Gessie, see Newport.
Glenwood, See Rushville.
Goshen, see Elkhart.
Grandview, see Rockport.
Graysville, See Sullivan.
Greencastle, Geo. Hathaway.
Greensboro, see New Castle
Greensburg, David A. Myers.
Grovertown, see Knox.
Guthrie see Bedford.
Hamilton see Angola.
Hamlet, see Knox.
Harrodsburg see Bloomington
Huntingsburg, see Rockport
Hammond, See Crown Point
Hardinsburg, see Paoli.
Hebron, see Valparaiso.
Heasville, See Crown Point.
Hiltonsville see Bedford.
Hobart, See Crown Point.
Homertown, see Petersburg.
Hope, see Columbus.
Huron see Bedford.
Huron, see Paoli.

Indianapolis, W. J. FOSTER.

Inwood, see Plymouth.
Jamestown, see Danville.
Jasper, see Rockport.
Keystone, See Bluffton.
Kingsland, See Bluffton.
Kirklin, see Frankfort.
Knightstown, see New Castle.
Knox. G. Arthur Murphy.
Kouts, see Valparaiso
Larwill, see Columbia City
Ladoga, see Crawfordsville.
La Porte, Weir & Weir.
Lawrenceburg see Harrison, Ohio.
Lebanon, see Danville.
LeRoy, see Crown Point.
Leesville see Bedford.
Liberty Centre, See Bluffton.
Linden, see Crawfordsville.
Linn Grove, See. Geneva.
Lizton, see Danville.
Logansport, W. S. Wright.
Lowell, See Crown Point.
Lynn, See Winchester.
Mace, see Crawfordsville.
Manilla, See Rushville.
Marlboro, See Rensselaer.
Martinsville, Adams & Newby
Medaryaville, see Knox.
Merom, See Sullivan.
Merrillville, See Crown Point
Michigan City, See LaPorte.
Michigantown, see Frankfort.
Middleburg, see Elkhart.
Mi dletown, see New Castle.
Millhousen, see Greensburg.
Milroy, See Rushville.
Mishawaka, see South Bend.
Mitchell see Bedford.
Mit hell, See Paoli.
Monon, See Monticello.
Monroe City, see Vincennes.
Monticello, | Reynolds & Sellers.
Mooresville, See Martinsville
Morgantown, See Martinsville
Morris, see Greensburg.
Monrovia, see Martinsville.
Montgomery, see LaFayette
Mount Etna, see Huntington.
Mt. Vernon, See Evansville.
Muncie, } Walterhouse & White
New Albany see Jeffersonville,
New Castle, Joseph M. Brown.
New Carlisle, see South Bend
New Corydon, See Geneva.
New Lebanon, See Sullivan.
New Market, see Crawf'd'vill
New Paris, see Elkhart.
New Point, see Greensburg.
Newport H. H. Conley.
New Ross, see Crawfordsville
Noblesville, See Anderson.
North Salem, See Danville.
North Judson, see Knox.
Nottingham, See Bluffton
Oaktown, see Vincennes.
Orangeville, see Paoli.
Orland, see Angola.
Orleans, see Paoli.
Osgian, See Bluffton.
Oxford, see Fowler.
Paoli, Thomas B. Buskirk.
Parker, See Winchester.
Parkersburg, see Crawf'd'vill
Paragon see Martinsville
Patton, see Sullivan
Perrysville, see Newport.
Petersburg, E. P. Richardson
Pikeville, see Petersburg.
Pittsburg, See Sullivan.
Pleasant Lake, see Angola.
Pleasantville, See Sullivan.
Pleasant Ridge, | See Rensselaer.
Plymouth, B. D. Crawford.
Portland, Cornelius Corwin.
Poneto, see Bluffton
Princeton, See Vincennes.
Raleigh, See Rushville.
Red Key, See Portland.
Remington, See Rensselaer.
Rensselaer, | Mordecai F. Chilcote.
Reynolds, See Monticello.
Ridgeville, See Winchester.
Rockdale, see Greencastle.
Rockport, Logsdon & Kramer
Rockville, Rice & Johnson.
Rome, See Tell City.
Ross, See Crown Point.
Rossville, See Frankfort.
Royal see Logansport.
Rushville, Frank J. Hall.
Russellville see Greencastle.
Salem, Alspaugh & Lawler.
San Pierre, see Knox.
Sardinia, see Greensbur
Scircleville, See Frankfort
Sedalia, See Frankfort.
Selma, see Muncie.
Shelbourne, see Sullivan
South Whitley, see Col. City
Scircleville, see Frankfort.
Shoals, see Paoli.
Spencer, see Brazil.
Spiceland, see New Castle.
Springville see Bedford.
Stockwell, see Lafayette
St. Paul, see Greensburg.
Sullivan, Hays & Hays.
Surrey, See Rensselaer.
Tell City, W. S. Lamb.
Terre Haute and all town in Vigo Co. } James E. Piety
Tocsin, See Bluffton.
Troy, See Tell City.
Tunnelton see Bedford.
Union City, See Winchester.
Unionville, see Paoli.
Valparaiso | Bartholomew & Crumpacker
Vera Cruz, see Bluffton
Veraline, See Bluffton.
Versailles, } Wm. D. Wilson. C. H. Wilson.
Vincennes, John Wilhelm.
Wakarusa, see Elkhart.
Walcott, See Monticello.
Walkerton, see South Bend.
Walton, see Logansport.
Washington, see Petersburg.
Waterloo, see Butler.
Waveland, see Crawfordsville
Waynetown, see Crawf'd'vill
Westport, see Greensburg.
West Baden, see Paoli.
West Point, see LaFayette
Wheeler, see Valparaiso.
Winamac, see Knox.
Winchester, A. J. Stakebake.
Wingate, see Crawfordsville.
Zanesville, see Bluffton
Zionsville, see Indianapolis.

IOWA

Adel, White & Clarke.
Agency, see Ottumwa.
Albion, see Marshalltown.
Afton, see Creston.
Ainsworth, see Washington.
Allerton, E. L. Hart
Algona and all towns in Kossuth Co } Geo. E. Clarke,
Arcadia, See Carroll City.
Alton, see Orange City.
Altoona, See Des Moines.
Allison, Craig & Smith.
Ame la, see Cherokee.
Anamosa, John S. Stacy.
Anita see Atlantic.
Aspinwall, see Denison.
Astor, see Denison.
Angus, See Boone
Aplington, See Allison.
Atlantic, Churchill & Swartz
Audubon, H. F. Andrews.
Avoca, See Council Bluffs.
Ayershire, see Emmetsbur
Bagley, see Guthrie Centre.
Bancroft, See Algona.
Bartlette, See Hamburg.
Bassett, See New Hampton.
Battle Creek, See Ida Grove.
Belmond, see Eagle Grove
Bevington, see Winterset.
Big Rock, See Davenport.
Birmingham, see Fairfield.
Blanchard, see Carinda.
Boone, J. R. Whitaker.
Brady ville, see Clarinda.
Brandon, see Independence.
Brayton, See Audubon.
Breda, See Carroll City.
Brighton, see Washington.
Brighton, see Fairfield.
Bristow, See Allison.
Bristol, see Northwood
Buffalo, See Davenport.
Burlington and all towns in Des Moines Co. } W. B. Culbertson.
Burt, see Algona.
Calliope, see Elk Point, Dak.
Carroll City, Jos. M. Drees.
Carroll, See Carroll City.
Coon Rapids, see Carroll City
Camanche, See Clinton.
Carson, See Council Bluffs.
Cascade, See Dubuque.
Casey, see Guthrie Centre
Cambridge, see Nevada
Cedar Falls, see Waterloo
Cedar Rapids, see Marion.
Centre Point, see Marion.
Centre Junct, see Anamosa.
Cleveland, see Chariton.
Charles City, See Nora Springs
Cherokee, Jas. H. Jones.
Chillicothe, see Ottumwa.
Cincinnati, see Centerville.
Clarinda, S. C. McPherrin.
Clarksville, See Allison.
Clayton, see McGregor.
Claxton, see Eagle Grove.
Clear Lake, See Mason City.
Clermont, see West Union
Clinton, Geo. B. Young.
Clearfield, see Creston
Coin, see Clarinda
Colfax, See Newton.
Color do, see Nevada
Columbus Jc., see Wapello.
Concord, Brockway & Elder.
Conesville, see Muscatine.
Conrad, see Grundy Centre.
Correctionville, see L. Grove.
Corydon, See Allerton.
Corning, Maxwell & Dale.
Council Bluffs } Smith, Carson & Harle
Crawfordsville, } see Washington.
Creston, Jas. G. Bull.
Cromwell, see Creston.
Cumberland see Atlantic.
Curlew, see Emmetsburg
Dallas Centre, see Adel.
Dakota City, See Humbolt.
Danbury, see Ida Grove.
Davenport, A. J. Hirschl
Danville See Burlington.
Dayton, see Fort Dodge.
Dedham, See Carroll City.
Delaware, see Manchester.
Derby, see Charlton.
Delta, see Sigourney.
Delmar, See Clinton.
De Soto, see Adel.
Denison, D. L. Boynton.
Des Moines, Callender & Smith.
DeWitt, See Clinton.
Dexter, See Adel.
Dorchester, see Lansing
Dixon, see Davenport.
Doon, see Rock Rapids.
Dover, see Keokuk
Dow City, see Denison.
Dubuque, Utt Brothers.
Dumont, See Allison.
Dunlap, See Logan.
Dyersville, See Dubuque
Dysart, see Toledo.
Earlham, see Winterset
Early, see Sac City.
East Port, see Hamburg
Eddyville, see Oskaloosa.
Eldon, see Ottumwa.
Elgin, see West Union.
Elkader, see McGregor.
Elk Port, see McGregor.
Ely, see Cedar Rapids.
Emmetsburg, C. E. Cohoon
Epworth, See Dubuque.

Essex see Clarinda.
Estherville Cooper & Allen.
Exira. See Audubon.
Fairbanks, see Independence
Fairfield, M. A. McCoid.
Fairpot, see Muscatine.
Farley, See Dunuque.
Fairfax, see Marion.

Farragut, See Hamburg.
Fayette. see West Union.
Ferguson, see Marshalltown.
Fertile, see Northwood
Fonda, see Pocahontas.
Fontanelle, see Winterset.
Fort Dodge, A. E. Clarke.
Fort Madison, Casey & Casey
Fowler, see Mew Hampton.
Fremont, see Oskaloosa.

Fredericksburg, see New Hampton
Galla. See Ida Grove.
Garwin, see Toledo.
Garrison, See Vinton.
Glidden, See Carroll City.
Gilman, see Marshalltown,
Gilmore, see Pocahontas.
Galbrook, see Toledo.
Gladstone, see Toledo.
Goshen see Mount Ayr.
Gowrie, see Fort Dodge.
Grafton, See Northwood.
Granville, see Orange City.
Grand Junction, see Jefferson
Gray, See Audubon.
Grafton, see Northwood.
Greene, See Allison.
Greenfield, see Winterset.
Greeley, see Manchester.
Grinnwold see Atlantic.
Grundy Centre Rea & Hayes.
Guttenburg, see McGregor.
Habur, See Carroll City.
Hawarden, See Elk Pt. Dak.
Hamburg, Stow & Hammond
Harlan, Macy & Gammon.
Harper Ferry SeeLansing.
Harper, see Sigourney.
Havelock, see Pocahontas.
Hawkeye, see West Union.
Hazelton see Independence.
Hedrick, see Sigourney.
Hepburn see Clarinda.
High Lake, see Estherville.
Holland, see Grundy Centre,
Holstein, See Ida Grove.
Hoopes see Orang City.
Hubbard, see Eldora.
Humboldt, A. D. Bicknell.
Hudson, see Waterloo.
Ida Grove, Jay D. Miller.
Independence, John J. Ney,
Ionia, See New Hampton.
Iowa City, A. E. Swisher.
Imogene, see Hamburg
Ireton, see Orange City.
Irvington, see Algona.
Jessup, see Independence.
Jolley, see Rockwell City
Kellerton, see Mount Ayr.
Kellogg, See Newton.
Keota, see Sigourney.
Kalo, see For Dodge.
Kensett, see Northwood
Kent, see Creston.
Keokuk, W. B. Collins.
Kingsley, see LeMars
Lake City, see Rockwell City.
Lake Mills see Northwood.
Lansing, L. E. Fellows.
Laporte, see Waterloo.
Larchwood, see Rock Rapids.
Lawler, see New Hampton.
Laurens, see Pocahontas.
Leighton, see Oskaloosa.
Lettsville, see Wapello.
Le Claire, see Davenport.
Le Grand, see Marshalltown.
Lehigh, see Fort Dodge.
LeMars, Amos & Alline.
Lewis see Atlantic.
Linevill e, See Allerton.
Lisbon, see Marion.
Lisomb, see Marshalltown,
Little Rock, see Rock Rapids
Little Sioux, see Logan.
Livermore, See Humboldt.
Logan, J. W. Barnhart.
Lourville, see Rockwell City.
Lone Tree, See Iowa City.
Lucas, see Charlton.
Lyon, See Clinton.
Macedonia, see Council Bluffs
Macksburg, see Winterset.
Magnolia, see Logan.
Manson, see Rockwell City.
Mallard, see Emmetsburg
Manchester, Bronson & Leroy
Manly, see Northwood.
Manning, See Carroll City.
Manson, See Rockwell City.
Marcus, see Cherokee.
Marion, J. C. Davis.
Marne see Atlantic.
Mapleton, T. B. Lutz.
Martinsburg, see Sigourney.
Marion, see Cedar Rapids.
Marshalltown, Boardman & Bradford
Mason City, Miller & Cliggett.
Masonville, see Manchester.
Mauloe, see Orange City.
Maynard, see West Union.
Maxwell, see Nevada
McGregor, Asahel Chapin.
McPaan, see Hamburg
Mediapolis, see Burlington.
Melburne, see Marshalltown.
Meridan, see Cherokee,
Merrill, see LeMars.
Messina see Atlantic.
Miles, see Maquoketa.
Minburn, see Adel.
Minden, see Council Bluffs.
Mitchelville, see Des Moines
Modale, see Logan.
Mo. Valley, See Logan.
Moingona, see Boone.
Mondamin, see Logan.
Monroe, see Newton.
Monticello, see Anamosa.
Montour, see Toledo.
Montrose, see Keokuk
Mount Ayr, Morris & Allyn.
Monmouth, see Maquoketa.
Mo. Valley, see Logan.
Morrison, see Grundy Centre.
Moulton, see Centerville.
Mount Etna, see Corning.
Mount Pleasant, Woolsen & Rabb.
Murray, See Osceola.
Muscatine, T. R. Fitzgerald,
Mt. Vernon, see Marion.
Nashua, see New Hampton
Neola, see Council Bluffs.
Nevada, J. A. Fitchpatrick.
New Albion see Lansing.
New Hampton, J. H. Powers.
New Hartford, see Allison.
Newmarket, see Clarinda.
New Sharon, see Oskaloosa.
Newton, Jas. A. Kerr.
Nichols, see Muscatine.
Nodaway, see Corning.
Nora Springs, E. S. Wheeler.
Northwood, Pickering & Hartley.
Nugent, see Marion.
Oakfield, see Audubon.
Oakland, see Council Bluffs.
Olin, see Anamosa
Onawa City, see Mapleton.
Osage and all towns in Mitchell Co, F. F. Coffin.
Osceola, M. L. Temple.
Oskaloosa, Bolton & McCoy.
Otho, see Fort Dodge.
Oelwein, see West Union.
Ogden, see Boone.
Ottumwa, Chambers, McKelroy & Carver
Oxford Junc't, see Anamosa.
Paris, see Marion.
Paton, see Fort Dodge.
Parkersburg, see Allison.
Paton, See Jefferson.
Patterson, see Winterset.
Pattersonville, see Rock Rapids.
Paulina, see Sanborn.
Percival, see Hamburg.
Perry, see Adel.
Peru, see Winterset.
Percival, see Hamburg
Peterson, see Spencer.
Plover, see Pocahontas.
Pocahontas, Bradley & Harlan.
Prairie City See Newton.
Preston, see Maquoketa.
Plum Hollow, see Hamburg.
Plymouth, see Mason City.
Polk City, see Des Moines.
Pomeroy, See Rockwell City
Postville, see Lansing.
Prescott, see Corning.
Primghar, see Sanborn.
Princeton, see Davenport
Randalia, see West Union.
Sandusky, see Keokuk
Ramsey, see Algona.
Raymond, see Waterlo.
Redfield, see Adel.
Red Oak, Smith McPherson.
Redding, see Mount Ayr,
Reinbeck, see Grundy Cntr.
Reubens, see Pocahontas.
Rolfe, see Pocanontas.
Remsen, see LeMars
Richmond, see Washington.
River Sioux, see Logan.
Riverton, see Hamburg.
Riverside, see Washington.
Rock Falls, see Mason City.
Rockford, see Nora Springs.
Rock Rapids, E. C. Roach.
Roselle, See Carroll City.
Rock Valley, see Orange City.
Rodman, see Emmetsburg
Roland, see Nevada
Rome, see Fairfield
Ross, see Audubon
Rose Hill, see Oskaloosa.
Rowley, see Independence.
Russell, see Charlton.
Sac City, Chas. D. Goldsmith
Sanborn, Warren Walker.
Saylorville, see Des Moines,
Schaller, see Sac City.
Seney, see LeMars.
Seymour, See Allerton.
Shellsbugh, See Vinton.
Shell Rock, see Allison.
Sheldon, see Sanborn.
Shenandoah, see Clarinda.
Sheridan, see Orange City.
Sidney, see Hamburg
Sigourney, Sampson & Brown
Sioux City and all towns in Woodbury Co, J. P. Blood.
Solon, see Iowa City.
Southerland, see Sanborn.
Springfield, see Marion.
StateCentre seeMarsha town
St. Charles, see Winterset.
St. Anthony see Marshalltown
Shambaugh see Clarinda.
Steamboat Rock, see Eldora.
Story City, see Nevada
Stratford, see Fort Dodge.
Sully, See Newton.
Swan Lake, see Estherville.
Tabor, see Hamburg
Tama City, see Toledo,
Traer, see Toledo.
Templeton, See Carroll City.
Thayer see Creston.
Tingley, see Mount Ayr.
Toddville, see Marion.
Toledo, J. A. Merritt.
Troy Mills, see Marion.
Truro, see Winterset.
Union, see Eldora.
Vail, see Denison.
Van Meter, see Adel.
Van Wert, see Osceola.
Village Creek, see Lansing
Viola, see Marion.
Vining, see Toledo.
Vinton, Ray Billingsley.
Waucoma, see West Union
Walker, see Marion.
Walnut see Atlantic.
Wall Lake, see Sac City.
Wanbull, see Marion.
Wapello and all towns in Louisa Co, E. W, Tatlock
Waterloo, Platt & Hoff.
West Side, see Denison.
Washington, Dewey & Eicher
Webster City, Chase & Chase.
Welman, see Washington.
Wellsburg, see Grundy Cntr.
Wesley, see Algona.
West Liberty, see Muscatine.
West Union, S. B. Zeigler I. M. Weed.
West Bend, see Emmetsburg
West Point, see Keokuk
What Cheer, see Sigourney.
Whitemore, see Algona.
Wilton, see Muscatine.
Winterset, A. W. C. Weeks.
Whittemore, see Algona.
Williamstown, See New Hampton.
Winthrop, see Independence
Wiota see Atlantic.
Wolcott, see Davenport
Woodbine, see Logan.
Woodburn, see Osceola.
Wyoming, see Anamosa.
Zearing, see Nevada

KANSAS.

Aldeu, see Sterling.
Abilene, Burton & Crawford
Alma, George G. Cornell
Altamont, see Parsons.
Altoona, see Fredonia.
Assaria, see Salina
Americus, see Emporia.
Ames, see Concordia.
Argentine, see Wyandotte.
Argonia, see Wellington.
Armondale, see Wyandotte.
Atchison, Smith & Solomon.
Atwood M. A. Wilson.
Augusta, see Eldorado.
Baldwin City, see Lawrence.
Barclay, see Osage City.
Bavaria, see Salina
Barnes, see Greenleaf.
Baxter Springs see Columbus
Beloit, see Cawker City.
Belle Plaine See Wellington

Blue Rapids, W. H. H. Freeman.

Burlingame, Wm. Thompson
Brown, See Kingman.
Burr Oak, see Mankato.
Burton, see Newton.
Buffalo, see Hays City.
Bismark, see Alma.
Bronson, see For Scott
Brown, see Fort Scott.
Bunker Hill, see Russell.
Brookville, see Salina
Canton, See McPherson.
Caldwell, see Wellington.
Camden, see Council Grove
Carbondale, see Osage City.
Cawker City, Frank J. Kelley
Cedarville, see Sedan
Centralia, see Atchison.
Chanute, see Erie.
Chapman see Abilene.
Chase, see Lyons.
Chautauqua, see Sedan.
Cherokee See Girard.
Chetopa, Leroy Neale,
Cheney, see Wichita.
Circleville, see Holton
Clay Centre, and all towns in Clay Co, W. E. Dunawa
Clear Water, see Wichita.
Cloverdale, see Sedan.
Clyde, see Concordia.
Concordia, L. J. Crans.
Conway, See McPherson
Colony, see Garnett.
Columbus, J. Railsback.
Coyville, see Fredonia.
Cherryvale, see Independence
Cresson, see Stockton,
Derby, see Wichita.
Detroit, see Abilene.

Dodge City and all towns in Ford Co. Thomas S. Jones.

Doniphan, see Atchison.
Dorrance, see Russell.
Dennis, see Parsons.
Douglass, see El Dorado,
Dwight, see Cawker City
Effingham, see Atchison.
El Dorado, Eugene E. Carr
Elgin see Sedan.
Elk City, seeIndependence
Ellinwood see Great Bend.
Elmwood, see Lyons.
Ellsworth, R. W. Carter.
Emporia, P. P. Hillerman.
Enterprise see Abilene.
Eskridge, see Alma.
Eudora, see Lawrence.
Eureka, T. L. Davis
Fall River, see Eureka.
Fall River, see Fredonia.
Farlington, see Girard.
Farmersburg See Sedan.
Fellowsbury, See Dodge City
Fontana, see Paola.
Fort Scott, W. W. Padgett.
Fredonia, T. J. Hudson.
Fulton, see Ft. Scott
Galena, See Columbus
Galva, See McPherson
Garnett, A. J. Smith.
Gaylord, Webb McNall.
Genda Springs, see Wellington
Girard, James Brown.
Glasco, see Concordia.
Glen Elder, see Cawker City,
Gorham, see Russell.
Great Bend, Clayton & Clayton
Greeley, see Garnett
Greensburg, see Kinsley.
Greenleaf, W. P. Mudgett.
Grinnell, see Hays City.
Hallowell, see Columbus.
Harts Mills, See Sedan
Haynsville, see Pratt.
Hays City, C. W. Reed.
Herndon, see Atwood.
Harper, Sam S. Sisson,
Hartford, see Emporia.
Harveyville, see Alma.

Hepler. See Girard.
Hiawatha see Atchison.
Hillsboro. see Marion Centre.
Hillsdale. see Paola.
Holton, Hayden & Hayden.
Humboldt. G. A. Amos.
Hunnewell, See Wellington.
Huron, see Atchison.
Hutchison, Zimmerman & Taylor.
Independence, J. B. Ziegler.
Ionia, see Mankato.
Iuka. See Pratt.
Jamestown, see Concordia.
Jewell City, see Mankato.
Kansas Centre, see Lyons.
Kansas City, see Wyandotte
Kingman and all towns in Kingman Co. } Gillett & Whitelaw.
Kinsley, W. H. Robb.
Kirkfield. See Dodge City.
Lancaster, see Atchison.
Larned, see Kinsley.
Laudell, see Atwood.
Lawrence, R. J. Borghalthaus
Laura, see McPherson.
La Cygne, J. V. Donaldson.
La Fountain see Neodesha.
Leabo, see Burlington.
Leavenworth, J. D. Shafer.
Lehigh, see Marion Centre,
Lenora, see Norton.
Leon see Eldorado.
Lincoln and all other towns in Lincoln Co. } Lou A. Minx
Lindsburg, see McPherson.
Little River, see Ellsworth
Lima, See Greenleaf.
Liberty, see Independence
Little River, see Lyons.
Lou sburg, see Paola.
Louisville, R. S. Hick.
Lyndon, see Osage City.
Lyons, J. W. White.
Madison, see Eureka.
Mankato, Wm. Metcalf.
Marion, see Marion Centre.
Marion Centre, L. F. Keller.
Melverne, see Osage City.
Memphis, see Fort Scott.
Mount Nebo, See Pratt.
Murdock, See Kingman
McPherson, D. P. Lindsay.
Motor. see Stockton.
McCune, See Girard.
Milan, see Wellington.
Miltonvale, see Concordia.
Minersville, see Concordia.
Monmouth. See Girard.
Monrovia, see Atchison.
Montania see Parsons.
Morganville, see Clay Centre
Mound Valley, see Parsons.
Mulvane, See Wellington.
Muscotah, see Atchison.
Neodesha, see Fredonia.
Neosho Rapids see Emporia.
Netawakee, see Atchison.
Newark, see Neodesha.
Nezawaka, see Holton
New Cumbria, see Salina
Nickerson, see Hutchison.
Northfield, see Wellington.
Omro, see Mankato.
Oakland. See Kingman.
Onaga, see Louisville.
Oneida, see Seneca.
Opolis. See Girard.
Osage City. H. B. Hughbanks
Osage Mission. see Erie.
Osawatomie, see Paola.
Oswego, Jos. Brockway
Otumwa, see Burlin.
Oxford, See Wellington.
Palmer. see Greenleaf.
Parsons James J. McFreely
Pawnee Rock see Great Bend.
Peabody, see Marion Centre.
Peru, see Sedan.
Pittsburg, see Girard.
Plainville, see Stockton.
Pleasanton, Blue & Rich.
Pratt. R. F. McGrew.
Raymond. see Sterling.
Raymond, see Lyons.
Reading, see Emporia,
Rosedale. see Wyandotte.
Russell. H. C. Hubbard.
Salem, see Mankato.
Saratoga see Pratt.
Scandia, see Concordia.
Scranton. see Osage City.
Sedan. J. D. McBrian.
Severy. see Eureka.
Spring Creek, see Sedan.
Spring Hill. see Olathe.
Salem, see Jewel City.
Salina, } T. F. Garver. T. L. Bond.
Sedgewick, see Newton.
Seneca, J. P. Taylor.
Soldier City, see Holton
Solomon City see Abilene.
Spring Hill, see Paola.
Stafford. See St. John.
St. John, Weeks & Bennett.
St. Marys, see Louisville.
Stockton, W. H. Barnes.
Strawn, see Burlington.
Sturling, see Ellsworth.
Thomas Centre. see Atwood.
Tipton, see Cawker City.
Toronto, see Eureka.
Topeka, A. BERGEN.
Troy, see Atchison.
Uniontown, see Fort Scott
Valley Centre, see Wichita.
Vining, see Clyde,
Walnut, see Erie.
Walton, see Newton.
Wakefield, see Clay Centre.
Wa. Keeney, see Hays City.
Wallace, see Hays City.
Wano, see Atwood.
Washington, See Greenleaf.
Wanega, see Louisville.
Wabaunsee, see Alma.
Waterloo, see Kingman.
Windom, see McPherson.
Webster, see Stockton.
Welda. See Garnett.
Wellington, Ledru Guthrie
Wendell, see Kinsley.
Westphalia, see Garnett.
Westmoreland, see Louisville
Wilson, see Ellsworth.
Whitemore, see Seneca.
Whiting, see Atchison.
Whitney, see Holton
White City, see Council Grove
Wichita, J. M. Balderston.
Winfield. M. G. Troup.
Wyandotte, see Kans. City Mo
Yates Centre. W. H. Slavens

KENTUCKY.

Adairsville, see Russellville
Auburn, see Russellville.
Beech Grove, see Calhoun
Belleview, see Hopkinsville.
Cadiz, see Hopkinsville.
Calhoun, Jep. C. Johnson.
Clarksville, see Hopkinsville
Cleopatra, see Calhoun
Central City, See Greenville.
Covington. J. F. & C. H. Fisk
Crofton, see Hopkinsville.
Curdsville, see Owensboro.
Dover, see Maysville.
Elkton, see Hopkinsville.
Elizabethtown Buah & Robertson.
Fairview, see Hopkinsville.
Flemingsburg, T. L. Given.
Frankfort, D. W. Lindsey.
Garrettesburgh, see Hopkinsv'l
George own. see Frankfort.
Glasgow, see Bowling Green.
Gratz, see Owenton.
Glenville, see Calhoun.
Greenville, M. C. Hay.
Harmony, see Owenton.
Hartford, see Owensboro.
Hawesville, see Owensboro
Hopkinsville, Campbell & Campbell. E. P. Campbell. E. T. Campbell
Island Station, see Calhoun.
Independence, see Covington
Knottsville, see Owensboro.
LaFayette, see Hopkinsville
Livermore, see Calhoun.
Livia, see Calhoun.
Louisville, 341 5-Av, NEWTON G. ROGERS. and all towns in Jefferson Co.
Ludlow. see Covington
Lusby's mill, see Owenton.
Madisonville, see Hopkinsville
Mayfield. G. S. Judd.
Mayslicke, see Maysville.
Mouterey. see Owenton.
Morgantown. See Greenville.
New Columbus, see Owenton.
New Liberty, see Owenton.
Owensboro, R. H. & E. P. Taylor.
Pembroke. see Hopkinsville.
Poplar Grove, see Owenton.
Princeton, see Hopkinsville.
Rochester. See Greenville.
Rumsey, see Calhoun.
Sacramento, see Calhoun.
Shelbyville, see Frankfort.
South Carrollton } see Greenville.
Warsaw, see Owenton.
Whitesville, see Owensboro.
Yelvington, see Owensboro

LOUISIANA.

Baton Rouge, K. A CROSS.
Clinton. See Baton Rouge.
New Orleans, Cor. Camp. & Com'l. Place. MERRICK, FOSTER & MERRICK
St. James. see New Orleans.
St. Joseph, see Natchez. Miss
Shreveport, John S. Young. Practises in all Federal and State Courts.
Vidalia, see Natchez. Miss.

MASSACHUSETTS.

Amherst. see Northampton.
Ashburnham, see Gardner.
Attleboro. see New Bedford
Boston, 150 Devonshire st. } Upham & Proctor
Brookfield. see Worcester.
E Hampton, see N. Hampton.
Enfield. see Northampton.
Fitchburg, see Gardner.
Florence, see Northampton.
Gardner, E. D. Howe.
Greenfield, F. C. Griswold
Hadley, see Northampton.
Hatfield, see Northampton.
Haydensville. see N. Hampton
Hubbardston, see Gardner,
Mansfield. see New Bedford
N. Brookfield, see Worcester.
N. Hampton, J. B. O'Donnell.
New Bedford } Wendell H. Cobb
Orange, see Greenfieeld.
Shelburne Falls. see Grenfield
So. Deerfield. see Greenfield
Spencer, see Worcester.
S. Hampton. see N. Hampton
Springfield. } E. P. Bartholomew. H. A. Bartholomew.
Templeton, see Gardner.
Turner's Falls, see Greenfield.
Westminster, see Gardner.
Winchendon. see Gardner.
Ware see Northampton.
Warren. see Worcester.
Williamsburg, see N. Hampton

MICHIGAN.

Ada, see Lowell.
Albion. See Marshall.
Alcona, see Harrisville.
Algonac, see Port Huron.
Allegan, Padgham & Padgham.
Almont see Lapeer.
Alpena, Turnbull, Shields & Dafoe.
Ann Arbor, E. K. Frueauff.
Ashton. see Reed City.
Bad Axe. see Port Austin.
Bangor, see Paw Paw.
Baraga, see L'Anse.
Battle Creek. See Marshall.
Bay City. Geo. W. Mann.
Belding, See Ionia.
Berrien Spring, see Niles
Bellevue, see Charlotte
Big Rapids. M. Brown.
Black River, see Harrisville.
Bridgeportsee, E. Saginaw.
Breckenridge, see Midland City.
Brighton, see Howell.
Bronson, see Coldwater.
Brockway Centre, see Port Huron.
Burton Harbor, see Niles
Buchanan, see Niles
Capac. see Port Huron.
Carrollton. see East Saginaw.
Caseville. see Port Austin.
Cedar Springs. see G'd Rapids
Centereville. see Three Rivers
Charlevoix. J. Milo Eaton.
Charlotte, L. H. McCall.
Chase, see Reed City
Champion, see Marquette
Clare. see Harrison.
Clarkesburg. see Marquette
Chebovgan. Geo. E. Frost.
Chesaning, see E. Saginaw
Coldwater. J. G. Parkhurst.
Coleman see Midland City.
Concord see Jackson.
Columbiaville, see Lapeer.
Constantine. see Three River
Corunna, James M. Goodell.
Decatur, see Paw Paw.
Derr, see Allegan
DETROIT and all towns in Wayne Co } G. H. PAINE
Dexter. see Ann Arbor
Dimondale, see Charlotte
Douglass, see Allegan
East Chain Lake, see Fair mount.
East Jordan. see Charlevoix
Eaton Rapids. see Charlotte.
East Saginaw, } Wisner & Draper
Edenville. see Midland City,
Emmitt, see Port Huron.
Escanaba, John Power.
Evart, see Reed City.
Farwell, see Harrison.
Fayette. see Escanaba.
Fowlerville, see Howell.
Freeland. see E. Saginaw.
Garden Bay, see Escanaba.
Girard. see Coldwater.
Glen Arbor, see Leland.
Grand Ledge. see Charlotte.
Grand Rapids, D. D. & W. H. Hughes.
Grass Lake. see Jackson.
Gratton Centre. see Lowell.
Hanover, see Jackson.
Hartford, see Paw Paw.
Harrison, Wm. H. Browne.
Hart, see Pentwater.
Hartland, see Howell.
Hersey, see Reed City.
Hillsdale and all towns in Hillsdale Co. } E. J. March.
Holland, see Grand Haven.
Homer, see Marshall.
Howell, J. L. Pettibone.
Hubbardstown. See Ionia.
Humboldt, see Marquette
Imlay City, see Lapeer.
Indian River, see Cheyboygan.
Ishpeming. E. E. Osborn
Jewaskekee, see E. Saginaw.
Kalamazoo and all towns in Kalamazoo Co. } J. W. Osborn
Lamont, see Grand Haven.
Lansing, Olds & Robson.
Lapeer, Frank Millis.
Lawton. see Paw Paw.
Lee's Corners, see Midland City.
Leland, Geo. A. Cutler.
Leroy, see Reed City.
Leslie, see Lansing.
Lowell, Milton M. Perry.
Lyons, See Ionia.
Ludington. White & McMahon.
Mackinac. see Cheboygan.
Manistee and all towns in Manistee Co. } Ramsdell & Benedict.
Marlette, George McKay.
Marquette. Ball & Hanscomb
Marshall, H. E. Winsor.
Mason. see Lansing.
Maxine City. see Port Huron
Meara, see Pentwater.
Memphis, see Port Huron.
Meredith, see Harrison.
Merrill, see E. Saginaw
Michigammie, see Marquett
Midland City and all towns in Midland Co } Byron Burch.
Milan, see Ann Arbor.
Montague, see Muskegon.
Mt. Clemens, Franklin P. Monfort.
Muir. See Ionia.
Muskegon, H. H. Holt.
New Baltimore, see Mt. Clemens.
New Haven, see Mt. Clemens.
New Buffalo, see Niles
Negaunee see Marquett
Niles, Worth Landon.
Newaygo and all towns in Newaygo Co } William D. Fuller.
North Adams. See Hillsdale.
North Branch, see Lapeer.
Otsego, see Allegan
Palmer. see Marquette
Pentwater. W. E. Ambler.
Pinkney, see Howell.
Plainwell, see Allegan
Port Austin. James H. Hall,
Port Huron. E. G. Stevenson.
Portersville. see Charlotte
Provemount, see Leland.

The Chicago Law Journal.

CHICAGO, OCTOBER, 1885.

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ON the following page will be found a statement to which we call special attention. Before deciding to enter upon the work indicated, we desire to obtain a general expression of our patrons as to whether our plan is practical or not, and we take this method of obtaining it.

Unless the reply we receive is almost unanimously in favor of the change it will not be made- It is, therefore, for our subscribers to say whether we shall undertake the work or not. Please let us her from you.

In answer to letters recently written to a few of our patrons asking for their opinion of the merits of our proposed plan, of enlarging and extending the usefulness of the JOURNAL we have received among others the following:

"_____*Sept. 24, 1885.*

I. S. WACHOB, ESQ.

Dear Sir:

"Replying to yours of 23rd will say that the proposed plan of the LAW JOURNAL is a good one, and should meet with the support and approval of all practicing attorneys. I find myself, and have no doubt my brothers do, that it is no small task to read over cases as they appear in the N. W.—N. E. & Pacific Reporters and others journals of this kind.

I am a subscriber to all these, and cannot do without them, but it seems to me that a law journal that wonld give a syllabus of the decisions of all the States and all the cases in those States, would fill an unoccupied place in legal journalism, and be an invaluable ald to the legal profession. * * * Yes sir, I'll give your project my support."

I am sir, your &c."

SPECIAL TO OUR SUBCRIBERS.

FROM suggestions from many members of the bar, and from our own observation and experience, it is evident to us that, any system of reporting which will bring before the practitioner, in condensed form, all the current decisions in the several states, and at the same time make readily accessible the full text of any decision which may be desired, would be of very great value to any lawyer. By the system of reporting recently adopted, all the decisions of from 25 to 30 States are available, at a cost of from $25 to $30 per year, but it seems to us *that life is too short* for any one to derive full benefit from such a large mass of matter. The average lawyer will not find practical use for more than one out of every one hundred of the decisions.

We propose, without any change in in the form of the CHICAGO LAW JOURNAL, to enlarge it sufficiently to give notes or a brief digest of *all current decisions in 25 States*, (except it be those reitterating and reaffirming some well established rule of law,) and subsequently at any time, furnish to our subscribers full copies of any decision which they may disire, at the net cost of copying them, which would be about 3¢ per 100 words. To do this will involve greatly increased labor and expense in producing the Journal and will necessitate an increase of the subscription price as follows:

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Now the purpose of this notice addressed to you and to all our subscribers, is to ask you if this plan, properly executed, would meet your approval and receive your continued patronage, at the increased price. Whether we enter upon the work or not will depend upon the answer we get from our present patrons in the aggregate. If we do enter upon the work it will begin with Vol. 7 January 1886.

You are kindly requested to make some answer without delay and, if affirmatively, to sign and return the blank order herewith inclosed.

Respectfully

I. S. WACHOB,

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IF THE proposed change is not made, the terms of subscription will remain as heretofore, and in any case subscriptions which expire between this and January 1886 will not be affected by the change for the current year. The change in the terms, if made at all, will take effect during the year 1886 as subscriptions expire.

SUPREME COURT OF CALIFORNIA.

SURETY FOR GUARDIAN—CO-SURETY—RELEASE OF ONE DISCHARGES CO-SURETY—Where a party becomes surety on the bond of a guardian, in place of a former surety, he becomes a joint obligor with the original surety, although the contracts are made in different instruments. In such a case an order discharging and releasing the obligor in the former bond also releases and discharges the latter.—*Spencer* v. *Houghton*—Filed April 1885.

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Date..... Signed.....

ATTORNEY-AT-LAW — DISBARMENT—FORMER CONVICTION OF CRIME.—The supreme court may disbar an attorney for wrongfully appropriating his client's money. In determining the question, the court will not consider the question of any criminal action, but simply determines the question, whether the attorney is a suitable person to be entrusted with the duties arising out of his relation to his client.—*In Re Treadwell.*—Filed Aug. 22, 1885.

PUBLIC LANDS—RESERVATION IN PATENT —Where it is reserved in a patent to land that, "should any vein, or lode of quartz, or other rock in place bearing gold, silver, etc. be claimed or known to exist within the above described premises, at the date thereof, the same is expressly excepted and excluded from these presents, "such reservation is *held* valid, and no title will vest in the patentee to the portion so reserved.—*Clary* v. *Hazlett.*—Filed Aug. 12, 1885.

ACTION TO QUIET TITLE—HOMESTEAD ENTRY — FORECLOSURE OF MORTGAGE. — In 1870 defendant made a homestead entry of land. In 1875 he mortgaged the land to secure a loan of money. In 1881 the mortgage was foreclosed and land sold. In 1883 defendant commuted his homestead entry into a cash entry, and received a certificate of pnrchase and claims title under the same. In an action by the mortgagee to quiet his title it is *held*, that action may be maintained and that title obtained under the foreclosure of the mortgage is good.—*Orr* v. *Stewart.* —Filed Aug. 1, 1885.

CONTESTED ELECTION—BALLOTS AS EVIDENCE—BALLOTS IN HANDS OF ONE OF THE CONTESTANTS.—The fact that, pending the contest of an election, the ballots were in the hands and custody of the *de facto* county clerk, who is a party to the contest, will not of itself render them inadmissable. The best evidence of tne number of votes cast for a candidate, is the ballots themselves, if they have not been tampered with. If it is alleged that they have been tampered with, the burden of proof is on the contestant.—*Coglan* v. *Beard.*—Filed Aug, 18, 1885.

RIPARIAN RIGHTS—EVIDENCE—STATUTE OF LIMITATIONS.—In a question of title to riparian rights, where the defendant sets up title by adverse possessiou, the plaintiff in rebuttal is entitled to show, by direct testimony, that defendant acknowledged plaintiffs title within the time limited by statute, by coming to him and offering to lease of plaintiff the land in dispute.—*Ledu* v. *Jim Yet, Wa.*—Filed Aug. 22, 1885.

HOMICIDE — DEGREES OF CRIME — INSTRUCTING JURY.—Where instructions given to the jury, even though erroneous, if they do not tend to prejudice the defendants case, are not grounds for new trial which results in a conviction of murder in the first degree. It is proper for the court to instruct the jury that, they should consider all the circumstances which would influence the testimony of defendant, when he testifies in his own defense, and weigh it accordingly. —*People* v. *O'Neill.*—Filed Aug. 26, 1885.

NEGLIGENCE—REASONABLE CARE—CONTRIBUTORY NEGLIGENCE.—In an action for damages for personal injury, the plaintiff must show that he exercised reasonable care to avoid the injury. Although he may have contributed to the injury without being in fault, still he may recover. Where plaintiff was loading lumber, and an engine was attached to the car on which he was working, and the car moved some distance, while he, the plaintiff stood on the end of the lumber, and by a suden stopping of the car he is thrown off and injured, *Held* that he may recover although he might have saved himself by climbing on top of the lumber.—*Dufour* v. *C. P. Ry. Co.*—Filed August 22, 1885.

PRACTICE—INJUNCTION—CONTEMPT OF COURT.—In proceedings for violation of an injunction, against officers of a corporation,

it is necessary that the affidavit state that the officers of the corporation had full knowledge of the injunction, but it is not necessary that the affidavit alleges that the defendants were officers of the corporation.—*Hughes* v. *Circuit Court of Yuba County.*—Filed Aug. 27, 1885.

ALIENS, NON-RESIDENT—MAY INHERIT PROPERTY.—The heirs, residing in Ireland, of a decedent in this state may take property by inheritance, although they do not come here in person to claim it, and they may assert their rights to the property within twenty years after judgment in the case.—*State* v. *Lyons.*—Filed Aug. 27, 1885.

SUPREME COURT OF ILLINOIS.

JUDGMENT BY CONFESSION ENTRY BY CLERK NOT A JUDICIAL ACT.—Judgments by confession during term time must be entered in open court, but in vacation may be entered by the clerk. The entry of a judgment by confession is not a judicial act. Vacation means not only the time between terms but a recess for a period of 32 days.—*Conkling* v. *Ridgley.*—Filed September 27, 1884.

DEED—GRANTEE ASSUMING MORTGAGE DEBT—RELEASE BY ORIGINAL MORTGAGOR—Where the grantee accepts a deed of land which is incumbered by a mortgage, and the deed recites the mortgage and that the grantee assumes the same, he cannot escape liability for the mortgage debt, although the original mortgagor grant to him a full release of the some. An equity of redemption is a sufficient consideration for the assumption of the mortgage debt.—*Bay* v. *Williams.*—Filed Nov. 17, 1884.

PROPERTY AGENT—VERBAL PROMISE TO PAY ONE HALF OF AN AGREED COMMISSION—Where a party acting as agent for real estate calls in a third party, and agrees verbally to give him one half of his commission if he will assist in selling the land, this does not amount to an assignment in equity, but merely establishes the relation of debtor and creditor between the parties.—*Wyman* v. *Snyder.*—Filed Nov. 17, 1884.

SUPREME COURT OF INDIANA.

DEPOSIT WITH BANK—PROPOSED BORROWER—FAILURE OF BANK.—Where a party has negotiated a loan of money on mortgage, and upon receipt of morgage leaves a check on his banker, to be deliverd to the mortgagor, and the bank fails, the depositor must suffer the loss, and not the mortgagor to whom the check was drawn.—*Security Co.* v. *Ball.*—Fiied June 12, 1885.

PROCEEDINGS IN REM.—PERSONAL JUDGMENT.—NOTICE BY PUBLICATION.—No personal judgment can be rendered where there has been only constructive service but, property fraudulently conveyed may be reached and subjected to sale by an action commenced by publication. Where there are issues of an equitable and legal nature in the same action they may be embraced in one action.—*Quarle* v. *Adbott.*—Filed June 9, 1885.

POLICE REGULATIONS—STATUTE REQUIRING THE VENDOR OF PATENT RIGHTS TO FILE COPIES OF LETTERS PATENT.—The passage of an act requiring persons offering patent rights, to first file with the clerk duly anthenticated copies of letters patent, and an affidavit that the letters are genuine, and have not been revoked or annulled, is a police regulation and constitutional.—*Brechbill* v. *Randall.*—Filed May 26, 1885.

EVIDENCE—PRIVILEGED COMMUNICATION TO A PHRSICIAN—NON-EXPERT WITNESS—POVERTY OF DEFENDANT.—The communication of a patient to his physician is privileged. A witness who is not an expert, in giving his opinion, must state the facts upon which that opinion is based. When all the facts can be given, the witness cannot give his opinion. In an action for damages for personal injuries, the financial circumstanses of the defendant should not be considered.—*Turnpike Co.* v. *Andrews.*—Filed May 26, 1885.

REPLEVIN BOND—ESTOPPEL—JURISDICTION OF JUSTICE.—Where in replevin a bond has been executed and the principal has obtained possession and converted the goods to his own use, the co-obligor in the bond cannot avoid liability, by showing that the Justiceof the Peace, by whom the bond was approved, had no jurisdiction of his person when he voluntarily submitted his person to the jurisdiction of the justice.—*Harbaugh* v. *Albertson.*—Filed May 25, 1885.

BASTARDY — ESCAPE OF DEFENDANT — JUDGMENT IN HIS ABSENCE.—In prosecution for bastardy a court may render the same kind of Judgment against defendant, when absent on an escape, as though he were present, and may enforce the judgment by a bench warrant.—*Lucas* v. *Hawkins.*—Filed May 25, 1885.

SUPREME COURT OF IOWA.

ACTION TO QUIET TITLE—TAX DEED—SERVICE BY PUBLICATION.—In an action to cancel a tax deed it is not necessary for plaintiff to show that he has paid all taxes upon the land; it is sufficient if he avers in his petition that he is ready, and willing to reimburse the holder of the title for moneys paid by him whenever the amount shall be Judicially ascertained.—*Taylor* v. *Ormsby*—Filed April 24, 1885.

RECEIVER—PARTNERSHIP—GARNISHMENT—ASSIGNMENT BY DEBTOR.—Where a receiver has been appointed in insolvency proceedings, the possession of the receiver is the possession of the court, and the funds in his hands as receiver are not subject to garnishment. After the appointment of a receiver in a matter of an insolvent partnership, an insolvent debtor cannot give one creditor preference over another by an assignment.—*McGowan* v. *Myers*—Filed April 4,2 1885.

PERJURY—INDICTMENT—PROPERTY WHEN ASSESSABLE.—In an indictment for perjury, the officer administering the oath must be shown by proper averments, or such facts stated as to make it Judicially appear to have had jurisdiction. An indictment, charging a party with concealing personal property from the assessor, and failing to allege that the property concealed was assessable is bad—*State* v *Cunningham*—Filed April 24, 1885.

HIGHWAY — OBSTRUCTION — ABATEMENT THEREOF AS A NUISANCE.—In an action for the obstruction of the highway the complaint alleged that the said obstruction was indicated on a plat which was put in evidence. It was not shown on the plat where the said obstruction was. *Held* that the variance between the allegations and the proof was fatal to the action.—*Sloan* v. *Rebman.*—Filed April 24, 1885,

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INTOXICATING LIQUORS—ACTION BY A CITIZEN OF ONE COUNTY AGAINST A PARTY IN ANOTHER COUNTY—ABATING A NUISANCE—In an action brought by the wife of a drunkard, who lives in one county, against a saloonkeeper in an adjoining county for the purpose of abating a nuisance, complaining that he sold liquor to her husband in violation of law, cannot be maintained. For such injury she has her remedy in an action for damages.—*Applegate* v. *Winebrenner*—Filed April 23, 1885.

RAILROAD COMPANY—STOCK RUNNING AT LARGE—LIABILITY OF COMPANY FOR KILLING.—The notice and affiidavit of killing of stock by a railroad company may be served on an officer or agent of the company, by simply delivering it without reading it to him. It is *held* error for the court to instruct the jury that, if the company neglect to build and maintain the fences sufficient to keep stock off its right of way, it was liable for all injury occasioned to such stock. Where cattle have been killed on the track and in an action to recover damages for the killing, the burden of proof is on the company to show that it had constructed and

kept up a good and sufficient fence.—*Brentner* v. *C. M.* & *St. P. Ry. Co.*—Filed April 22, 1885.

PUBLIC SCHOOLS—AWARDING CONTRACT FOR BUILDING SCHOOL HOUSE.—Where school boards advertize for bids for building a school house, reserving the right to reject any or all bids, the lowest bidder cannot compel the board to award the contract to him by an action of *Mandamus*. Demurrer to petition sustained.—*Hanlin* v. *District of Charles City.*—Filed April 23, 1885.

SUPREME COURT OF KANSAS.

FRAUDULENT CONVEYANCE—CONVEYANCE BY HUSBAND TO WIFE.—If a wife is a *bona fide creditor* of her husband she is entitled to the same protection as any other creditor, and a conveyance of land to her by her husband in payment of a just debt, at a fair consideration, is valid. Such debt may be paid by the husband although the statute of limitations may have run against it.—*Kenney* v. *Powell.*—Filed July 9, 1885.

EXEMPTION—MECHANICS TOOLS—PRINTING PRESS.—The statute of Kansas provides that "The necessary tools and implements of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business and in addition thereto, stock in trade not exceeding $400 in value" shall be exempt from levy for debt. Under this statute *held*, that a printing press and material used for publishing a paper is extempt.—*Bliss* v. *Vedder.*—Filed July 9, 1885.

VENDOR AND VENDEE—GRANTOR INSANE—HOW TO CANCEL DEED.—Where a deed is executed and land conveyed by an insane person, and the grantee has no knowledge of the grantor's insanity, he not having been declared insane by legal proceedings, in order to have the deed cancelled, the grantor or those representing him must first return the money paid or offer to return it.—*Gribben* v. *Maxwell.*—Filed July 9, 1885.

ATTACHMENT—SUFFICIENCY OF AFFIDAVIT—AMENDING.—An affidavit for an attachment must specify the amount which the plaintiff claims he ought to recover. Where the affidavit is defective in this, it cannot be amended by, an affidavit verified by, oath made before the plaintiff's own attorney. Such affidavit cannot be filed.—*Tootle* v. *Smith.*—Filed July 9, 1885.

RAILROAD—EJECTMENT FROM TRAIN—DAMAGES.—In an action for damages for being wrongfully ejected from a railroad train, and for injuries received, it is sufficient for plaintiff to show that the train was in defendants use, and it is not essential that defendant owned the train. Conductor of a train has no right to eject a passenger while the train is in motion. Punative damages cannot be obtained unless it is shown that the act was done maliciously.—*Sullivan* v. *O. R.* & *N. Co.*—Filed June 11, 1885.

CRIMINAL LAW—REFUSING WARRANT OF ARREST.—Where a citizen files a complaint, in accordance with the statute, charging another with a misdemeanor, and demands that a warrant issue for the arrest of the person so charged, if the Judge of the district court refuse the order, no appeal will lie from his order to the supreme court.—*State* v. *Forbriger.*—Filed July 9, 1885.

PEDDLER'S LICENSE—CITY ORDINANCE—VALIDITY OF.—A city ordinance imposing a license on peddlers is class legislation and is valid. Prosecution for violation of such ordinance, before a police judge, is not invalid because in the complaint the letters J. P. are used instead of P. J. denoting police judge.—*Cherokee* v. *Fox.*—Filed July 9, 1885.

RAILROAD COMPANY—OBLIGATION TO FENCE THEIR TRACK—LIABILITY FOR DAMAGE TO STOCK ALTHOUGH STOCK IS RUNNING AT LARGE IN VIOLATION OF LAW.—A hog escaped from an inclosure without any fault of owner and strays upon the railway track

and is killed by a passing train. The railway company is *held* liable for damage although the hog was at large contrary to law. The company alleged that a lawful fence, as required by statute, would not prevent a hog from going through and upon the track, and therefore the absence of the fence did not expose the hog to danger. *Held* that, if this were so the burden of proof was on the company to show that fact.—*M. P. Ry. Co.* v. *Bradshaw.*—Filed May 8, 1885.

GUARANTY—COLLECTION OF DEBT—LIABILITY OF GUARANTOR.—Where a party has guaranteed the payment of a debt, and after judgment against the debtor, an execution *immediatly* issued, the property of debtor appraised and sold at a fair price but does not pay the debt in full, the guarnntor is not released, although the debtor might have demanded and obtained a stay of six months if he had so desired.—*McNall* v. *Burrow.*—Filed May 8, 1885.

PRACTICE—AMENDED ANSWER SUPERSEDES FIRST ANSWER—LEGAL TITLE TO REALTY AS AGAINST THE EQUITABLE TITLE—LIMITATION.—Where defendant has filed an amended answer, the plaintiff cannot avail himself of the fact, that the defenses set up in the answer and crosspetition were inconsistent with each other. Where the legal title to realty is in one person and the equitable title in another, the statute of limitation will not run as between them until there is a renunciation of the trust, or the owner of the legal title asserts an adverse claim to the interest of the real owner.—*Reihl* v. *Likowski*—Fiied May 8, 1885.

COMMON CARRIERS—DUTY TO PASSENGERS—DUTY TO REMOVE FROM THE CAR A PASSENGER WHO BECOMES SICK OR INSANE—Where the death of a party is caused by negligence, the personal representatives of deeeased may recover nominal damages, although no pecuniary damage was sustained. It is the duty of a railroad company to provide for the comfort of their passengers, and to protect them from the annoying or offensive condnct of other passengers. Where the conduct ot one passenger becomes such as to annoy and endanger the passengers it is the duty of the railroad company to eject him from the train. In removing a sick passenger from the train it is the duty of the company to take reasonable care of him, temporarily, until he be placed in charge of the overseers of the poor.—*A. T. & S. F. R. R. Co.* v. *Weber.*—Filed May 8, 1885.

SUPR. COURT OF MASSACHUSETTS.

PERPETUAL TRUST—FUND FOR KEEPING CEMETERY LOT IN REPAIR.—Where a testator provided in his will, that a certain amount should be set apart for keeping a cemetery lot in repair it is within, the power of the probate court to carry out the intention of the testator,notwithstanding the law is averse to creating perpetual trusts.—*Gates* v. *White,*—Filed May, 1885.

SALE OF GOODS—IMPLIED WARRANTY.—Where a party sells goods of a certain discription, it will be presumed that the seller agreed to deliver the best article of the species or kind named in the contract, but otherwise when the purchaser has stipulated for the kind only.—*Wilson* v. *Lawrence.*—Filed May, 1885.

COMMON CARRIER—CONNECTING ROADS—LIABILITY FOR LOSS.—Where two or more railroads form a through line and agree to carry goods over the several lines between distant points, in case of loss, the shipper has his remedy against the roads as partners and may recover from them jointly or severally for the loss.—*Block* v. *E. & N. S. D. F. F. Line*—Filed May 1885.

PRIVATE WAY—INJURY TO PASSENGER—LIABILITY OF CITY.—Where a private way is in a dangerous condition, and a notice to that effect is posted to warn parties of danger, this notice is sufficient to relieve the city from liability for injuries received by passing

along the way, even though the passenger did not see the notice.—*Smith* v. *City of Lowell.*—Filed May 1885.

EVIDENCE—EXTRA WORK ON A HOUSE.—In an action for balance on building contract, the defence being unskillful work, it is error to allow testimony to the effect that another house buill by same party was well done.

When an architect is called as a witness to show that the work on the contract was delayed by extra work, he should first be required to say what should be considered extra work in the case. It is error to allow a person to testify that he found poor work there, unless he first testifies that he is an expert.—*Campbell* v. *Russell.*—Filed May 1885.

BANKRUPT—FRAUDNLENT CONTRACT WITH CREDITOR.—Where a bankrupt debtor agrees with a creditor that, if he will consent to his discharge in bankruptcy, he will subsequently pay the debt in full, and although after he gets his discharge, he agrees in writing to pay the debt, such agreement is tainted with the orginal fraud and no recovery can be had on the writing.—*Tyrrell* v. *Freeman.*—Filed May, 1885.

RAILROAD MANAGER—SCOPE OF HIS AUTHORITY—CARE OF LIVE STOCK IN CASE OF WRECK.—Where a train carrying live stock is wrecked, it is within the authority of the manager of the road to direct that the stock be driven to a place of safety. A person thus driving swine upon the property of another, with consent of the owner, is not liable for disease communicated thereby to other stock, when he was not aware of the diseased condition of the swine.—*Hawkins* v. *Locke.*—Filed May 1885.

SUPREME COURT OF NEBRASKA.

CONTRACT FOR SALE OF LAND—SIGNED ONLY BY VENDOR—PURCHASE MONEY NOTE PAYABLE AT CERTAIN BANK.—A contract for sale of land signed only by the vendor may be enforced. Where notes are given for the purchase money, and are made payable at a certain bank, the maker is not in default, in not paying the same, until they are presented for payment at the designated place. —*Robinson* v. *Cheney.*—Filed August 25, 1885.

SUPPEME COURT OF NEVADA.

EXEMPTION—LIVERY STABLE KEEPER NOT A LABORER.—Where certain exemptions are allowed in favor of laboring men, a man who is a livery stable keeper is not entitled to such exemptions as a "laboring man."—*Edgecombe* v. *Creditors.*—Filed July 7, 1885.

OFFICIAL BOND—COUNTY TREASURER—FUNDS STOLEN—Where funds in the custody of the county treasurer are stolen, he and his bondsmen are liable for the funds. If the bond is in the usual form, without words specificaly expressing liability in such an emergency, it is sufficient. It is the duty of the officer to safely keep said funds and pay them out according to law.—*State* v. *Nevin* —Filed July 26, 1885.

NEW YORK COURT OF APPEALS.

NAVIGABLE STREAM—STATE POWER OF ALIENATION.—The fact that a stream is navigable, does not deny the state the right, to grant to individuals the right to erect a dam thereon. Where the effect of a statute enacted is to make a contract with an individual, it imposes an obligation which neither party can abrogate at pleasure, unless such statute concern such matters as place the parties in the relation of subject and sovereign.—*Dermot et al.* v. *State.*—Filed April 14, 1885.

REGISTER OF DEEDS—MANDAMUS TO COMPELL ACCESS TO RECORDS—DISCRETION OF THE REGISTER.—The register of deeds in Kings county having denied, the agent of an Abstract of Title Company, access to the records, application is made for a writ of mandamus to compell him to grant the desired access which writ is denied. The

register is allowed to exercise his discretion to some extent, when such access would interfere in some degree with the public.—*People* v. *Richardson.*—Filed April 21, 1885.

LEGACY—NEGLECT OF EXECUTOR—LIABILITY.—Where an executor fails to set apart for the use of an infant legatee the amount necessary for her support, and the excess of accumulation which was to be delivered to her upon her majority, is responsible for the deficit of principal and interest from the time of his accepting the trust.—*Remington* v. *Walker.*—Filed April 28, 1885.

UNEXECUTED TRUST—POWER OF SUPREME COURT—PRACTICE.—The Supreme Court has no jurisdiction to try and determine the questions involving the rights and interests of parties interested in an unexecuted express trust, as they are affected by the validity, extent and character of the trust, or the right of possession of the property.—*In Re Pelition of Warring.*—Filed April 28, 1885.

ASSIGNMENT FOR BENEFIT OF CREDITORS—A non-consenting creditor retaining funds paid by mistake. Where an assignment for benefit of creditors is made, a creditor who refuses to join in a settlement, and subsequently retains funds paid him by mistake. thereby constructively joins in the assignment scheme.—*Iu Re Morgan, Assignee.*—Filed May 5, 1885.

LESSOR AND LESSEE—COVENANT TO REPAIR—NEGLECT OF LESSEE—REQUISITE CARE OF A TENANT.—Where the lessee holds under a lease including covenants by which he is bound to keep the premises in repair he may become liable to a stranger who suffers damage by reason of the bad condition of the premises. Reasonable care is what the law requies of a tenant, and what is reasonable care depends on the nature of the property.—*Odell* v. *Solomon.*—Filed May 5, 1885.

CITY TREASURER—OFFICIAL BOND—LIABILITY OF BONDSMEN WHEN NEW DUTIES ARE IMPOSED.—Where new duties are imposed on the city treasurer, after execution of his bond, liability for the proper discharge of such duties is included in the bond. Where the city treasurer is delinquent in respect to the school fund, the action to recover must be brought by the school board, and not by the city.—*Board of Education* v. *Quick.*—Filed May 5, 1885.

INSOLVENT BANK—RECEIVING DEPOSIT JUST BEFORE CLOSING—RIGHTS OF DEPOSITOR.—Where a party makes a deposit in a bank and the officers of the bank know at the time that it is insolvent, and shortly afterwards the bank is closed, the depositor has a right of action, not as a creditor, but for money fraudulently obtained, and the assignee for the creditors has no right to the money so deposited.—*Cragie* v. *Hadley.*—Filed May 5, 1885.

SUPREME COURT OF OHIO.

LOT SEVERED BY APPROPRIATION OF LAND—ASSESSMENT TO BE MADE ON EACH LOT—Where a city lot is servered by a municipal corporation opening up a street through the the land, the property should be assessed as two lots, and it is error to charge the assessment on one of the lots upon the other. Where land is sold for taxes and, some part of the tax charged upon the land for which it was sold was illegally so charged, such sale is void.—*Younglove* v. *Hackman*—Filed March 25, 1885.

CITY ORDINANCE—FRANCHISE TO LAY PIPES IN STREET—FORFEITURE POSTPONED BY LEGAL PROCEDINGS—Where by a city ordinance, the right to lay pipes in the public street is granted, on condition that the grantee shall execute a good and sufficient bond, and shall begin the work within one year from the passage of the ordinance, or the grant shall be void; and pending the period, the city solicitor commences proceedings to enjoin the enjoyment of the franchise, and

the final judgment in the matter sustains the ordinance and the legality of the grant. *Held* that the legal proceedings suspended the running of the ordinance and the grantee has one year from the time of final judgment to begin the work.—*State* v. *Boyee.*—Filed March 10, 1885.

INSTRUCTION — RAILROADS —DEFECTIVE FENCE—Where a party presents instructions, to be given to the jury in writing if he is not entitled to have them given in the terms in which they are expressed they should be refused. The statute requiring railroad companies to fence their track, should be reasonably construed, and where damages occur from a defect in the fence without any neglect on part of the company, it is not liable. In determining the character of the fence it is not competent for witnesses to give their opinion who have no other qualification except that they have seen the fence.—*B. & O. R. R. Co.* v. *Schultz.*—Filed May 12, 1885.

PERSONAL INJURY—PERSON ASSISTING DRIVER OF A STREET CAR—NOT A FELLOW SERVANT,—Where a passenger on a street car, in pushing the car on to a side track at the driver's request, and while doing so receives injuries through the negligence of the driver, it is *held* that the company is liable. The plaintiff cannot be considered a fellow servant, nor did he engage in the service as a volunteer. The doctrine of *respondeat superior* applies.—*McIntire R. R. Co.* v. *Balton.*—Filed May 12, 1885.

NEGLIGENCE — MINOR — PARENT'S NEGLIGENCE NOT CHARGABLE TO THE CHILD.—A child 16 years of age, riding in a wagon with her father, is injured by a collision with a street car, which is the result of mutual negligence of the driver of the car and of her father, who was driving the wagon. *Held* that the negligence of her father is not chargable to the child and that she may recover.—*St. Clair St. Ry. Co.* v. *Eadie.*—Filed March 31, 1885.

NOTE AND MORTGAGE—EXTENSION OF TIME TO DEBTOR.—Where a purchaser of land, which is incumbered by a mortgage, agrees, with the mortgagee to extend the time of payment of the mortgage, for a consideration, it will not discharge the maker of the note and mortgage from liability wholely, but only to the extent of his loss by such extension. — *Teeters* v. *Lamborn.*—Filed March 31, 1885.

MARRIED WOMEN—CHARGING HER SEPARATE ESTATE BY ORAL CONTRACT—EUQUITABLE REMEDY.—A contract of a married woman, which charges her separate estate, need not be in writing. Such a contract may be enforced by equitable proceeding, and plaintiff is not bound to exhaust his legal remedy before proceeding in equity.—*Elliott* v. *Lawhead.*—Filed April 28, 1885.

SUPREME COURT OF UTAH.

PUBLIC LANDS—RIGHT OF WAY FOR RAILROAD—SUBSEQUENT PATENTEE—BASIS OF VALUE IN CONDEMNATION PROCEEDINGS.—Where a railroad track has been constructed over public lands, and a patent subsequently granted for the lands, in condemnation proceedings, by the railroad company, the patentee cannot have the land appraised at its present value. It should be valued as if the railroad were not constructed.—*D. & R. G. W. Ry. Co.* v *Stancliff* —Filed June, 1885.

POLIGAMY — INDICTMENT UNDER THE EDMUNDS ACT.—The misdemeanor against which the Edmunds act is directed, is the act of a man dwelling with more than one woman in the repute of matrimony. To sustain an indictment it is not necessary to establish the fact of sexual intercourse.—*Unite States* v. *Camon.*—Filed June 27, 1885.

UNITED STATES CIRCUIT COURT. D. COLORADO.

Gillet v. *Bowen.*

CORPORATIONS—TRUST RELATION OF OFFICERS—RELATION TO STOCKHOLDERS.

The officers of a corporation occupy trust relations to the corporation but not as to the stockholders INTER SESE.

In Equity.

L. S. Dixon and *Thos. Macon*, for complainant.

Decker & *Yonley*, for defendants.

BREWER, J. Out of the tangled and voluminous testimony in this case I have deduced these facts.

1. In August, 1875, the San Juan Consolidated Mining Company was organized as a corporation, under the laws of the territory of Colorado, with a capital stock of 20,000 shares of $100 each; the corporators being the complainant, the defendants Bowen and Tankersley, and George M. Binckley. To this corporation these several corporators conveyed certain mining claims and properties owned by them, receiving in payment therefor, each, 3,875 shares of the stock. Subsequently, and during the fall of that year, the remaining 4,550 shares were, with the exception of five shares, issued to defendant Bowen and others for the purchase of other mining properties. The four corporators above named constituted the first board of directors. Defendant Tankersley was president; Binckley, vice-president; complainant, superintendent; and defendant Bowen, secretary and treasurer. These officers remained unchanged during the transaction which form the basis of this litigation. While the stock of this corporation was large, yet, until 1880, its value was wholly speculative, a mere guess at the undiscovered bowels of the hills, so much so that in 1879 defendant Tankersley sold to defendant Bowen 3,800 shares, and a note of $6,000, given by the corporation, for $1,000.

2. Whatever trifling legal business—and it was but trifling—the firm of Tankersley & Bowen, or either of them, may have transacted for complainant and Binckley prior to the organization of the company, after that time, neither as a firm nor individually were they the attorneys of, nor did they occupy confidential relations to, complainant or Binckley. In their subsequent dealings with each other in respect to stock matters, these four corporators dealt at arm's length. I consider this an important fact, for if defendant Bowen, with whom this controversy really is, either individually or as a member of the firm of Tankersley & Bowen, was the attorney of or occupied other confidential relations to complainant or Binckley, then it devolves upon him to show the good faith and sufficient consideration of the subsequent transactions, while if not, it devolves upon complainant to show the bad faith and lack of consideration. A good deal of testimony was introduced for the purpose of showing such confidential realations, but it seems to me of the weakest and most frivolous character. It is not pretended that there was any formal retainer, or that any fees were paid. Binckley claims that he had paid Bowen in advance, in that, 20 years prior thereto, he had, as editor of a country paper in Iowa, supported Bowen in a canvass for the legislature. He seems to think that such support gave him a permanent lien on Bowen's professional services and established life-long confidential relations. Doubtless the parties were, at the time, friendly, and as friends confided in each other. They worked together in a common effort to develop the mining properties of the corporation in which they were stockholders. As officers of the corporation, they occupied trust relations to it, and in the faithful performance of such trusts they would indirectly subserve the interests of the other stockholders. But trust relations to the corporation do not, as to the stockholders, create trust relations *inter sese.* Whatever duties they owed to the corporation, as between themselves they dealt at arm's length, and neither had special charge of the other's interests. I fail to see any satisfactory testimony showing that Bowen was ever employed by Binckley or com-

plainant, or ever acted as an attorney in respect to their stock or individual properties, or occupied any other confidential relations to them in respect thereto.

3. On or about the twenty-eighth of October, 1875, a contract in writing was entered into between complainant, Binckley, and Bowen, on the one side, and Tankersley on the other, by which, in consideration of $500,000 of the stock of said company, to be delivered to Tankersley by the other parties, he ageed to purchase and put up during the spring of 1876, on the property of said company, a 10-stamp mill and convey the same to the company. Of this $500,000 of stock, Bowen was to give $125,000. and Binckley anb complainant the rest, in equal proportions. At the time, or within two or three days thereafter, Binkley and complainant gave $375,000 in stock to Tankersley, and this stock is the subject of the present controversy. Now, what was the effect of this contract as to the title to this stock? Obviousley to vest it absolutely in Tankersley. He did uot hold it as trustee. It was not placed in his hands to be used by him as their agent in procuring the mill. It was payment in advance. They relied on his promise, and if he failed to perform that promise their recourse, or that of the company, the beneficiary in the contract, was not upon the stock, but against him. This is the fair interpretation of the contract as, in the bill of complaint, it is charged to have been made. It is true, complainant and Binkley say that they understood that Tankersley was to return the stock if he failed to procure the mill, and Tankersley says that when he got from them the stock, two or three days after the contract, he promised to return it if he did not get the mill. But this arrangement, if made, was an after agreement, not a part of the original contract, and unknown to Bowen. So far as that contract is concerned ,the stock was to be immediately delivered, and according to Bowen's testimoney was, in fact, delivered as payment in advance, and the parties trusted to Tankersley's promise and responsibility for the fulfillment by him of his agreement.

4. Soon after this contract and the receipt of the stock, Tankersley went to Chicago to make arrangements for the mill. In so going, and while there, he was at some little personal expence the amount of which is not disclosed; neither is any repayment of these expenses hereinafter mentioned. He did not in fact procure any mill in Chicago, but about the first of January, 1876, was notified by Bowen by telegraph not to purchase any, because he (Bowen) had obtained in Denver a 30-stamp mill. He immediately came to Denver, and there an arrangement was, on the third day of January, made between himself and Bowen on the one side, and J. B. Chaffee on the other, for the erection of a 30-stamp mill, The contract between the parties is as follows.

"EXHIBIT A

"Memorandum of agreement made and entered into this third day of January, A. D. 1876, by and between Jerome B. Chaffee of the city of Denver and territory of Colorado, party of the first part, and Thomas M. Bowen and Charles W. Tankersley, of the county of Rio Grande and territory aforesaid, parties of the second part.

"Witnesseth, that the said party of the first part, for and in consideration of certain stipulations and agreements hereinafter mentioned and agreed to by the parties hereto, has agreed, and does by these presents agree and bind himself, to furnish and erect, at a point to be selected by himself, and approved by the parties of second part, in the Summit mining district, in Rio Grand county, in the territory of Colorado, a good thirty-stamp quartz-mill, complete and suitable for working gold ore, with proper machinery and steam-power for operating said mill and machinery for saving gold, together with a suitable building to cover said mill and machinery, the whole to be erected and completed at the cost and expense of the said party of the first part as early in the spring and summer of the year A. D. 1876 as is practicable or the weather will premit.

"It is further agreed by and between the parties hereto that when said mill is completed and ready to operate, as hereinbefore mentioned, and in good running order, the said party of the first part shall have, and hereby has, the option to accept such propositions as the said parties of the second part may make, in full payment for said mill and machinery; or, in case of refusal to accept such proposition or propositions on the part of the said party of the first part, then the said party of the first part hereby binds himself to sell and deed to the said parties of the second part all of said mill and premises for their own free use and benefit, upon the following terms, to-wit: the first cost of said mill to be twelve thou sand dollars ($12,000,) and such other cost as may arise in transporting said mill from Gilpin county to the above-named location in Rio Grande county, and also all cost and expense in erecting the same, and putting the same in running order, and completing the same, and also the building inclosing the same. The terms of payment to be as follows, to-wit: The first twelve thousand dollars to be paid in quarterly payments at the end of each quarter from the day the said party of the first part shall decline the proposition or propositions made by the said parties of the second part to be paid in quarterly payments in like manner, but during the following year,—the said amounts to be put up into notes in amounts corresding with the payments as above mentioned and signed by the said parties of the second part, and drawing interest at the rate of eighteen per cent. per annum from date until paid, and secured by trust deed upon said mill and premises, and also by one-quarter of the paid-up stock of the San Juan Consolidated Mining Company, a company organized under the laws of the territory of Colorado and owning mining property in the said Summit mining district; said quarter of rtock in said company amounting to five thousand dollars at par value; said stock to be held by the said party of the first part as additional security to said notes, and collateral thereto.

"It is further agreed that the said parties of the second part shall furnish, free of expense, to the said party of the first part, a good and suitable site upon which to locate and erect said mill, deeding the same to the said party of the first part at or before the commencement of erecting the same. The said party of the first part agrees to keep accurate account of all cost and expense of transporting and erecting said mill and building, together with all cost and expense of every nature, to put the same in good working condition, and exhibit the same, with all proper vaochers attesting the same.

"In the case the said party of the first part shall elect to sell the said mill, as aforesaid, then said party shall deliver the same over to said parties of the second part upon a full compliance on their part of all the stipulations and obligations relating to them herein contnined.

"The proposition referred to in the foregoing, to be made by the parties of the second part, shall be made by them to the said party of the first part in writing, and at or within ten days from the time said mill shall be ready to run. In case of neglect or refusal to make such proposition, then the said parties of the second part hereby bind themselves to take said mill and premises, and pay for the same upon the terms herein named, and to execute said notes and trust deed, and deliver the same to the said party of the first part; and the said party of the first part shall thereupon deliver peaceable possession of said mill and premises to the said parties of the second part. In case said mill is not ready to operate by the first day of August, A. D. 1876, then the third quarterly payment aforesaid shall be postponed, and not become due until sixty days after said quarterly payment would have become due by the maturity of said note.

"It is further agreed that the trust deed aforementioned shall provide that if default be made in any payment when due and payable, it shall render the whole amount of deferred payments due and payable, and

notice shall be given in said trust deed of thirty days for any foreclosure. In case of neglect or failure of either party to comply with the stipulations and conditions herein mentioned, the other party shall not be bound by this agreement. In case of the death of either one of the parties of the second part a faithful compliance by the other shall be binding upon the said party of the first part.

"Witness aur hands and seals, at the city of Denver, Colorado territory, this third day of January, A. D. 1876.

"JEROME B. CHAFFEE. [Seal.]
"THOMAS M. BOWEN. [Seal.]
"CHAS. W. TANKERSLEY." [Seal.]

On the next day the stock named in said agreement, to-wit, $500,000,—$375,000 of which was, by the admissions in the pleadings the stock in controversy—was turned over to Chaffee, and the following receipt therefor given:

"EXHIBIT B.

"(In duplicate.)

"Received of Thomas M. Bowen and Charles W. Tankersley five thousand shares, of one hundred dollars each, ($500,000,) of the stock of the San Juan Consolidated Mining Company, to be accepted as their proposition to me, as mentioned in an agreement dated January 2, A. D. 1876, between them and myself, or to be held by me as the collateral security mentioned in said agreement for the payment from said Bowen and Tankerslep to myself, as I may elect to decide. J. B. CHAFFEE.

"*Denver, January* 4, 1876."

It will be noticed that this contract was not made between Chaffee and the company but between him and Tankersley and Bowen. The latter were not authorized by the company to make any such contract; did not assume to act for the company in respect to it; and were personally entitled to all the benefit, and liable for all the obligations, thereof. In sho.t, it was a purely personal contract betweem them and him. Whether should turn it over to the company, and if so, upon what terms, were matters to be decided subsequently, and upon proper arrangements with the company. The fact that they were officers of the company gave it no claim upon the contract.

5. Soon after making this contract Bowen and Tankersley returned to Del Norte and advised complainant—Binkley being away—of its terms. During the spring and summer of 1876, Chaffee preceeeed with his con, tract, removed the mill to San Juan county and erected it on ground belonging to the company. Obviousley all parties assumed that the mill was to become the property of the company, and that it was to provide for payment of the contract price. Yet Chaffee had not agreed to accept the company as purchaser, and Bowen and Tankersley had not turned the contract over to the company. They were waiting to make something out of the transaction for themselves personally. About the first of July, 1876, Chaffee came to Del Norte, the mill being nearly completed, to arrange for payment. The cost of removal and erection was found ta be $20,000, which, with $12,000, the first cost, made $32,000 due Chaffee. The situation was as follows: The company had entered into no contract and made no promises. Tankersley had contracted with Bowen, Binckley, and the complainant to put up a 10-stamp mill, and received from them $500,000 in stock as payment in advance. He had put up no 10-stamp mill. The company was the beneficiary in this contract. Chaffee had contract with Bowen and Tankersley to put up a 30-stamp mill, and convey the same to them for $32,000, secured by their notes and deed of trust upon the mill and mill-site, and also by $500,000 in stock of the company. This stock he then, held, it being the stock delivered to Tankersley under his contract. The mill had been put up on ground belonging to the company. After considerable negotiation it was agreed between Chaffee, Bowen and Tankersley that the mill should go to the company; that a deed of trust, on the entire property of the company

be executed to secure $32,000 of notes of the company payable to Chaffee; that Chaffee should take, in full payment of his claim, $20,000 of these notes, and the $500,000 of stock then in his hands as collateral; and that $12,000 of the notes should be given to Tankersley to be divided between him and Bowen in consideration of their turning the benefit of their contract over to the company, and in payment for their services in the matter; and that 10 of the stamps in the 30-stamp mill should be accepted by the company, the beneficiary, as a full discharge and satisfaction of the Tankersley contract. It is true, Tankersley denies any knowledge of, or participation in, any such arrangement; but the testimony overwhelmingly proves that his denial is not to be believed; that the arrangement was made as above stated, and that he was a party to it; and, further, that he reeeived and retained $6,000 of the notes, and afterwards surrendered them to the company and received new notes therefor, the latter being the notes which, with his stock, he sold to Bowen in 1879. In addition to the positive testimony of witnesses, reference may be made to the novation contract signed by Chaffee.

"EXHIBIT C.

"Know all men by these presents, that whereas, on the third day of January, 1876, Jerome B. Chaffee entered into a contract with Thomas M. Bowen and Chas. W. Tankersley for the erection, in the Summit minning district, Rio Grande county, Colorado, of a thirty-stamp quartz-mill, complete, with machinery and steam-power for running the same; and, whereas, it has been agreed by and between said parties that said mill, machinery and power shall be transferred and conveyed to the San Juan Consolitated Mining Company direct from said Chaffee upon the following terms, to-wit: One-third of said mill, machinery, and steam-power being to satisfy and fill a certain contract existing, whereby said Chas. W. Tankersley agreed to erect on the property of said company a ten-stamp quarts mill, for which said one-third of said thirty-stamp mill, machinery and steam-power it is agreed that said Chaffee shall receive in full payment therefor the $500,000 of full-paid non-assesable stock of the said San Juan Consolidated Mining Company, now in his hands, received by him from said Bowen and said Tankersley, under said contract, dated January 3, A. D. 1876; and for this other two-thirds of said mill, machinery, and steam-power, the board of trustees of said company has agreed to pay said Chaffee the sum of $32,000, payable in installments, and represented by eight promissory notes, secured by deed of trust on the whole of said thirty-stamp mill and the property of said company: now, therefore, in consideration of the premises and such novation, and the sum of one dollar, paid by said parties each to the other, it is mutually understod and agreed that, by the agreements hereinbefore set forth, the said contract between the said Chaffee and the said Bowen and Tankersley, dated January 3, A. D. 1876, is fully complied with and satisfied, and each of the parties thereto are hereby fully released in the premises.

"In witness whereof, we hereto set our hands and seals this day of ——— A. D. 1876,

J. B. CHAFFEE. [Seal.]
"———————. [Seal.]
"———————." [Seal.]

And to the bill of sale signed by Bowen and Tankersley, and written on the back of the receipt given bo Chaffee in January, of the stock as collateral, which bill af sale reads as follows:

"We have sold the whole of the stock mentioned in ihis receipt to Jerome B. Chaffee in payment for the 30-stamp mill.

[Signed] "THOMAS M. BOWEN.
CHAS. W. TANKERSLEY."

"*August* 16, 1876."

It is not, so far as the controuersy between complainant and Bowen is concerned, very material whether, as an independent fact, Tankersley was party to this arrangement or not. The complete overthrow of the

testimonyin respect thereto is this: The complete overthrow of Tankersley's testimony coupled with the obvious fact that, though nominally a defendant, he is really the suggester and promoter of this suit, casts large discredit on his entire testimony. In whatever of wrong was done to complainant aud Binckley he was equally guilty with Bowen, and his apparent disclosures do not spring from any honest desire to make atonement therefor, but from unworthy motives as against Bowen, Under such circumstances a court may well be execused for placing little reliance upon his testimony.

6. In pursuance of this arrangement, on the sixth day of July, 1876, a meeting of the directors of the company was held, the complainant being present, and a resolution passed directing the issue of $32,000 in notes, and the execution of a deed of trust upon the property of the company as security therefor. And on August 16th a meeting of the stockholders was also held, at which complainant was also present, and at which three resolutions were passed, the complainant voting for all of them; the first authorizing the notes and deed of trust as above, and the third reading as follows:

"Resolved, *third*, that the thirty-stamp mill completed, including crusher, transferred to this company by Jerome B. Chaffee, includes the 10-stamp mill agreed to be erected by Charles W. Tankersley; and the said Tankersley is hereby fully receipted, and a full compliance with said contract on his part is hereby acknowledged, and that the $32,000 of notes executed and delivered to Jeroma B. Chaffee shall be deemed and held full payment for the other twenty stamps, power, and machinery for running twenty stamps of same included in said thirty-stamp mill, the purchase whereot is hereby expressly authorized, ratified, approved, and confirmed."

Thereafter the notes and deed of trust were executed; Chaffee received $20,000; Tankersley, $12,000; $6,000 of the latter Tankersley gave to Bowen, and with this and a note of his own of $4,600, the latter purchased the $500,000 of stock from Chaffee. The stock thus passed into Bowen's hands, and was afterwards sold by him. The complainant, having bought out Binckley, now claims that of this stock $375,000 was theirs when pledged, in the first instance, to Chaffae; that no change in that respect was made with their knowledge or assent, and that Bowen, buying from Chaffee, simply bought from a pledgea with notice of the pledge; and the $32,000 of notes secured by this pledgee having been paid by the company, they are reinvested with full title; and that he must respond to them for the value of this stock of theirs which he has converted.

Obviously the privotal question now is as to their knowledge of and assent to the arrangement above named, or at least so much thereof as surrendered their stock in consideration of what was received by the company. And this question is very doubtful. I have had little trouble in tracing the course of events up to this point, but upon this I am much at a loss to determine the real truth. Both Binckley and the complainant testified that they knew nothing of any such arrangement; that they were informed of the contract of January 3d, and that the stock had been put up as collateral; and never knew of any change. Bowen, on the contrary, testifies that they were both informed of the change, and assented to it. He does not claim that they were told of the manner in which the stock and notes were divided between Chaffee, Tankersley, aed himself; that, he testifies, he considered a private matter between the three, in which they had no interest, but that they were fully informed that 10 stamps of the Chaffee mill were to be taken by the company as a full performance by Tankersley of his contract, and, of course, if his contract was performed, he was entitled to retain the stock.

When there is such a direct contradiction in the testimony of the parties interested, we must look at their conduct and the surrounding circumstances to ascertain the truth. These matters, I think, plainly tend

to sustain Bowen's testimony, and, while I may not notice all, I will mention some that have forcibly impressed me. And *first*, it must be borne in mind that the arrangement was in fact made as stated; the third resolution passed at the stockholders' meeting, and for which complainant voted. They had agreed to give and had given this stock to Tankersley upon his agreement to put up a 10-stamp mill, Of course, when he performed this contract, even if the stock was put in his hands simply in trust, as complainant and Binckley claim, the stock became his absolutely. Their title to the stock, their rights to its return, their interest in it, was then wholly gone. And in this condition complainant votes for a resolution whice, after referring to the 10-stamp mill contract, reads that "Tankersley is hereby fully receipted and a full compliance with said contract on his part is hereby acknowledged." How any person of ordinary intelligence could have assented to snch a resolution, and still supposed that that contract was to be considered as unperformed and set one side, and the orginal owners of the stock reinvested with title thereto, is difficult of comprehension- Grant that might have been fuller and more specific, might have stated that the orginal donors of the stock surrendered the same and all their claims thereto to Tankersley,—and still the import would have been the same, and the meaning but little more obvious. Full compliance with the contract is, in terms, admitted. Full compliance divested them of all claims to the stock; and yet now they say that they supposed all the time that the stock was theirs. Again, they knew that Tankersley must have been to some expense by reason of his trip to Chicago. Whether they knew all the expense to which he had gone, is uncertain. But they nowhere pretend to have reimbursed or offered to reimburse him these expenses. Can it be that they supposed Tankersley was so generous as to donate these expenses? It is true that in January, 1877, a year after the Chicago trip, the company allowed Tankersley a few hundred dollars for money advanced by him, above the $6,000 in notes heretofore referred to, and it is possible that this allowance was for these expenses, but the testimony fails to show that it was. Again, if this stock was still theirs, why should they, owning less than half the stock in the company, advance three-fourths of the pledge. And when, as they soon did, they parted with substantially all the rest of the stock owned by them, why did not they insist that Tankersley, who had put up nothing in this pledge, should put up $125,000, and thus release to them for disposal a like amount? Still again, a very natural inquiry, which suggests itself, and it would seem must have occurred complainant, is, of what special advantage was the stock as collateral when a deed of trust on the entire property was held? The latter took all, while the former only covered a part. I do not mean that the stock did not have some special value in view of the case with wihch it could be disposed of and its proceeds applied on the debt, but that was a value more easily appreciated by a shrewd and speculative business man than by one uneducated and ignorant, and an effort is made to picture the complainant and Binckley as of the latter class.

But further, and very strongly, the subsequent conduct of the complainant and Binckley indicates, to my mind, that they understood that they had given up this stock. Within a few months both left the San Juan country, having disposed of substantially all the other stock owned by them in the county; and from that time on until about the commencement of this suit, in 1883, they acted as though they had no interest in the company. They moved from place to place, never apparently concerning themselves with any of the affairs of the company, having no correspondence with its officers, and acting towards it as any stranger might be expected to act. Statements of complainant are testified to—some of which he denies, and some he attempts to explain—which emphasize his belief that he had no remaining interest in the

company. When this conduct is placed along with the fact that in the fall of 1879 a rich deposit was discovered, and that in 1880 and 1881 over $300,000 was taken from the mine,—a fact not concealed, but notorious,—one is forced to the belief that they supposed they had no further interest in the mine, and that want of interest must have resulted from their having given up the stock in controversy, as defandant Bowen testifies, or from a belief that the pledgee had disposed of it to pay his claim. If the latter was the truth, it seems to me that, beyond question, inquiry would have been made. No man, especially no poor man, as each of the parties was, will remain silent when a possibility of wealth belonging to him is suggested. In short, for I do not care to potract this opinion, I cannot reconcile voting for this resolution, and the subsequent indifference of the parties to the prospects and affairs of the company, with their present claim that they never knew nor assented to the giving up of this stock. It is not in accord with my convictions as to the probable conduct of ordinary men; and here I refer to what I said in the openlng of this opinion, that, there being no confidential relation between Bowen and the complainant or Binkley, it devolves upon the complainant to prove that Bowen's conduct was wrongful, and not upon Bowen to prove that lt was rightful. Doubts in the matter are to be resolved against the complainant. One thing more I should mention; I have spoken of complainant and Binckley as though they occupied the same position as developed in the testimony. This is not strictly true. Complainant was present at the director's and stockholders' meeting; Binckley was not. The former's relations to the actual management of the affairs of the company seems to have been more intimate than the latter's. And still, if I may so define it, it seems to me that Bowen and Tankersley occupied one relation to the company and these transactions, while complainant and Binckley occupied another and partially antagonistic; and, further, that the relations between the two latter seem to have been such that it is only fair to presume that what one knew and assented to the other did also. Hence I have not distinguished between them, but have spoken of them as agreeing in knowledge and action. I do not know that I can add anything more to express my conclusions, or the reasons therefor, unless I were to go into the mere details of the testimony, and that would be a protracted and useless labor. My conclusion therefore is that the wrong charged upon the defendant Bowen is not proved. Of course, in the view I have taken, the matter of amendment to the answer is immaterial.

A decree will be entered dismissing the bill.

SUPREME COURT OF CALIFORNIA.

ADMINISTRATOR—FRAUDULENT SALE OF LAND—LIABILITY FOR DOUBLE VALUE.—A person having an estate of inheritance, in the realty of a decedent, may recover of an executor or administrator, who has fraudulintly sold the lands, double the value thereof. An action connot be maintained on the bond of an administrator for neglect or misconduct unless the estate has actually suffered damage thereby. *Weihe* v. *Statham*—Filed July 30, 1885.

MARRIAGE CONTRACT—UNDUE INFLUENCE—EVIDENCE.—In an action to enforce a marriage contract, where the defense is that undue influence was exercised over defendant, in making the contract, by persons claiming to be spiritual mediums, it is error to admit the opinion of a witness that the defendant was liable to such influence in an unusual degree.—*Connor* v. *Stanley*.—Filed Aug. 9, 1885.

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The Chicago Law Journal.

CHICAGO, NOVEMBER, 1885.

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NEW LAW PUBLICATION.

WE have received the two first nos. of the *Southern Law Times*, published at Chattanooga, Tennessee. It is a weekly of 24 pages and gives all the decisions *in digest* of *Tennessee, Mississippi, Arkansas, Alabama Georgia, North Corolina and South Carolina*, together with notes on current topics. Subscribtion price $5 per annum. The general plan of the publication is a good one and we wish the publishers abundant success, which we belive they merit.

MYER'S FEDERAL DECISIONS

WE have received Vol. 12 of Myer's Federal Decisions. The publishers announce that the 8th and 9th Vols. will be ready for delivery on or before January 1st, 1886.

This will make the first 12 volumes of the series complete. Although the issue of this series is not quite as rapid as was promised, the merits of the work are fully up to what the profession was led to expect. It will be a work which the profession will find exceedingly valuable, and the low price compared with that of thc original reports will bring it within the reach of almost every lawyer.

WE are very much pleased and gratified by the almost unanimous approval, in so far as we have had expression, of our proposed plan of enlarging and extending the sphere and usefulness of the Journal as announced in the last issue. Out of all responses received 93 per cent. declare their approval. There are some of our subscribers from whom we have not yet heard on the subject. An expression from each and every one would be greatly appreciated.

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SUPREME COURT OF CALIFORNIA.

SHERIFF—FOOD FURNISHED PRISONERS—COMPENSATION—ALLOWANCE BY BOARD OF SUPERVISORS NOT FINAL.—If the board of supervisors do not allow the sheriff reasonable compensation for food furnished prisoners, he may sue the county for what he claims.—*Fuekerth* v. *County of Stainslaus*—Filed Aug. 22 1885.

HOMESTEAD—WIFE MAY MAINTAIN AN ACTION FOR IN HER INDIVIDUAL NAME—HUSBAND OR WIFE CANNOT CLAIM ADVERSELY TO EACH OTHER.—A wife may maintain an action in reference to homestead without her husband joining in the action. When the husband is in possession under a lease from the owner, the wife cannot claim the premises adversely, so as to set the statute of limitations in motion. *Frink* v. *Alsip* 49 Cal. 103. The husband cannot claim the homestead adversely to the wife. *Bank* v. *Guerra*, 61 Cal. 109. Adverse possession must be open and continuous.—*Mauldin* v. *Cox*.—Filed Aug. 27, 1885.

MINING PROPERTY—TRESPASS—MEASURE OF DAMAGES.—In an action for damages for wrongfully entering upon mining property, and digging and taking away minerals, the measure of damages, where the *gravamen* of the action is the injury done to the land, will be the value of the minerals taken away, less the expense of doing the work; but the defendant cannot justify in an action of trespass, and allege that the expense was greater than the value of the minerals excavated. In every trespass the law presumes at least nominal damages—*E. G. Mining Co.* v. *B. G. Mining Co.*—Filed Aug. 28, 1885.

RAILROADS—CHANGE OF ROUTE—RIGHT OF WAY.—A railroad company having surveyed its route and obtained the rigth of way, may change and acquire the right of way by another and more advantageous route, and may take land for right of way, same as in their original survey.—*Eel River Ry Co* v. *Field*—Filed Aug. 28, 1885.

RAILROADS—TAXATION BY MUNICIPAL CORPORATION. — A municipal corporation which grants to a railroad a right of way and other valuable frauchises on condition that it shall locate its depot within the corporate limits, may subsequently tax such railroad the same as any other road running into the city may be taxed. Such taxation is not in violation of the contract regarding the location of the track and depot.—*Los Angeles* v. *So. Pacific Ry. Co.*—Filed Aug. 29, 1885.

CRIMINAL LAW—MURDER—DEATH PENALTY.—In rendering a verdict, in a trial of murder in the first degree, if the jury do not fix the penalty, it is the duty of the court to impose the death penalty.—*People* v. *French*—Filed Aug. 29, 1885.

BOUNDARIES—DIVISION FENCE.—Where parties agreed upon a boundary line between their farms, and erected a division fence thereon which was allowed to remain as such, long enough to create title by adverse possession, and subsequently one of the parties objected to the line as established. *Held* that the line thus established might be maintained. —*Sharp* v. *Blankenship*.—Filed August 29, 1885.

FIRE INSURANCE—EMPLOYMENT OF A WATCHMAN TO GUARD THE PROPERTY.—If a policy of fire insurance is conditioned that a watchman shall be kept on the premises while the property is unoccupied, and a person nominaly employed as watchman is engaged in work several hours of each day at a distance of 2200 feet away from the property, and during the nigth sleeps in a house 900 feet away, and not in view of the house; such a watchman is not a compliance with the terms of a policy. A watchman is a sentinel. A breach of any one of several conditions in a policy is fatal to recovery on

the same.—*Wenzel* v. *Com. Ins. Co.*—Filed Aug. 29, 1885.

CONSPIRACY — CONSPIRATORS MAY BE SEVERALLY INDICTED. — An information charging conspiracy need not be against the conspirators jointly. It is sufficient to charge an individual although he must have conspired with one or more persons known or unknown.—*People* v. *Richards.*—Filed Aug. 28, 2885.

SUPREME COURT OF ILLINOIS.

LANDS SOLD FOR TAXES—APPEAL—IMPERCT DESCRIPTION.—In an action for sale of land for taxes due thereon, where an appeal is taken from the county court, sale of land eannot be made pending the appeal. If the description of the land is imperfect, yet if it is sufficient to identify the land, and the lien for the tax discharged it is sufficient. —*Crane* v. *Peacock.*—Filed June 13, 1885.

BILL TO ENFORCE A TRUST—EVIDENCE OF TRUST.—In an action to enforce a trust, where a widow is called as a witness in her own behalf, and in behalf of her children, she is a competent witness as to all matters within her knowledge, except such knowledge as had been communicated to her by her husband in his lifetime.—*Powell* v *Powell* —Filed June 13, 1885.

DIVORCE—HOMESTEAD CLAIMED BY DIVORCED WIFE—DOWER.—A wife who has obtained a decree of divorce from her husband with alimony, cannot claim homestead rights in the property of her divorced husband, after his decease. A second wife, surviving the husband is entitled to the homestead of her husband.—*Stahl* v. *Staht* —Filed June 13, 1885.

FRAUDULENT CONVEYANCE — RIGHT OF DOWER—LIMITATIONS.—A deed executed by husband and wife, made in fraud of creditors, becoming void because of the fraud, does not bar the wife of her right of dower. To show a period of seven years adverse possession and payment of taxes will bar the right of dower.—*Stowe* v. *Steele*—Filed June 13, 1885.

PARTNERSHIP—PROPERTY IN HANDS OF RECEIVER—LIEN BY JUDGMENT.—After a partnership has been placed in the hands of a receiver, creditors cannot obtain priority of lien by taking judgment. If judgment is obtained pending the receivers jurisdiction, and the receiver is subsequently dismissed the judgment will become a lien.—*Jackson* v. *Lahee.*—Filed June 13, 1885.

COMMON CARRIER—CONSIGNEE—RIGHTS OF PARTIES.—Two car loads of grain were consigned to B., who in the usual course of trade sold the grain to P. and gave directions to the carrier to store the grain in warehouse. The grain was stored, and having been sold to P. he gave his check for the price thereof. Before P.'s check was presented for payment he order the grain shipped, which was immediately done. When P.'s check was presented, payment was refused. *Held* that the warehouseman had no right to ship the grain upon the order of P. The making and delivering of a check is not a payment until the check is paid.—*P. & P. U. Ry. Co.* v. *Buckley.*— Filed June 13, 1885.

TRUST DEED—MISTAKE AND REFORMATION.—Where in a trust deed certain lands are omitted in the description which it was intended should be included, and the lands thus omitted are subsequently sold, the court will refuse to reform the deed. But if in the provisions of the trust deed the lands in question were refered to as being subject to the lien created by the trust deed such lien may be enforced.—*Sidwell* v. *Wheaton.*— Filed June 13, 1885.

NEGLIGENCE—INJURY TO A SERVANT BY NEGLIGENCE OF FELLOW SERVANT.—A master not guilty of negligence is not responsible to a servant for injury caused by negligence of a fellow servant, and when it

it is alleged that the master was negligent in keeping an incompetent servant, the burden of proof is on plaintiff to show the fact.—*Stafford* v. *C. B.* & *Q. Ry. Co.*—Filed June 13, 1885.

MUNICIPAL CORPORATION—RIGHTS OF CHILDREN TO PLAY UPON SIDEWALKS.—Where a child while playing upon a sidewalk is injured by reason of bad condition of the walk it is held that the city is liable. The city owes the same duty to a child as to an adult, and it must keep the sidewalk in reasonably good repair. It is lawful for a person to be upon the sidewalk, for pleasure or for idle curiosity.—*City of Chicago* v. *Keefe.*—Filed Sept. 22, 1885.

MUNICIPAL CORPORATION — ESTOPPED FROM DENYING PLANS AND SPECIFICATIONS MADE BY A PROPER OFFICER OF THE CITY.—Where plans and specifications for a public building are placed on file as a basis for bids for building, the city is estopped from subsequently denying such plans and specifications. Stipulations of a contract considered.—*City of Chicago* v. *Sexton.*—Filed Sept. 21, 1885.

DESCENT—ADVANCEMFNT BY PARENT TO CHILD—RIGHTS OF THE GRAND CHILDREN.—Where an advancement is made by a parent to a child, and accepted by the child in full satisfaction of his portion in his father's estate, and such child dies before his father, the grand children by the deceased son is cut off by advancement to their father, from any interest in their grandfather's estate.—*Simpson* v. *Simpson.*—Filed Sept. 23, 1885.

CORPORATION—FOR CHARITABLE PURPOSES—EXEMPT FROM TAXATION—ASSESSMENTS FOR BENEFITS.—Where the charter of a corporation for charitable purposes contains a clause exempting it from taxation it is nevertheless liable for assessments for benefits for the purpose of opening an alley.—*Chicago* v. *Baptist Theo. Union.*—Filed Sept. 21, 1885.

SUPREME COURT OF INDIANA.

PRACTICE — BEFORE COMMISIONERS — NOTICE.—In a proceeding before county commisioners to declare a road a highway, parties who appear, and make no objection to want of notice, waive any objection which might have been made. Where an appeal has been taken, and a motion to dismiss the appeal has been overruled, the supreme court cannot consider such motion unless it is made a part of the record or is embraced in the bill of exception.—*Washinton Ice Co.* v. *Lay.*—Filed Sept 17, 1885.

CONSTITUTIONAL LAW — ILLEGAL FEES TAXED—RECOVERY OF FIVE TIMES THE AMOUNT.—A statute authorising the recovery of five times the amount of fees illegally taxed and collected by an officer, *held* not unconstitutional. An action for such recovery may be maintained any time within five years.—*State* v. *Stevens.*—Filed September 17, 1885.

INSTRUCTION—ERRONEOUS, FOLLOWED BY A CORRECTION.—A court having given instructions which are erroneous cannot cure the error by subsequently giving instruction correctly on the same point. The erroneous instruction must be wholely withdrawn.—*McCrory* v. *Anderson.*—Filed September 16, 1885.

DEATH BY WRONGFUL ACT—ACTION FOR DAMAGES—COMPLAINT.—In an action by a personal representative for death caused by a wrongful act, the petition must allege the existence of the widow, children or next of kin, for whose benefit the action is brought.—*Stewart, Admr.* v. *T. H.* & *I. R. Co.*—Filed Sept. 16, 1885.

MORTGAGE—FORECLOSURE—FAILURE OF MORTGAGED PREMISES TO SATISFY THE DEBT—LEVY ON OTHER PROPERTY.—Although the

order of sale in foreclosing a mortgage direct that levy shall be made on other property of the debtor to satisfy the debt, yet if such levy is made before the mortgaged property is exhausted such levy is void.—*Thomas* v. *Simmons*.—Filed September 15, 1885.

SCHOOL TRUSTEE—POWER OF SPECIAL AGENT WITH LIMITED POWERS.—It is incumbent on those dealing with a school trustee to know whether he acts within the scope of his authority or not. Where a trustee borrows money for school purposes when he already has township funds in his hands sufficient for the purpose, he is exceeding his authorty, and his act is void.—*Union Tp.* v. *1st Nat. Bank*—Filed Sept. 15, 1885.

TELEGRAPH COMPANY–RIGHT TO REQUIRE ADVANCE PAYMENT FOR ANSWER TO TELEGRAM.—A telegraph company has a right to enact a by-law requiring that, when a telegram is sent which requires an answer, the sender of the message shall pay or deposit sufficient money to pay for a ten-word answer.—*W. U. Tel. Co.* v. *McGuire*—Filed Setp. 15, 1885.

PERJURY—INDICTMENT—MATERIALITY OF THE FALSE STATEMENT.—In an indictment for perjury it is sufficient if the crime is charged substantially in the language of the statute, the precise words not being used. The false statement must be touching some material point in the issue.—*State* v *Anderson* Filed Sept. 26, 1885.

STATUTE OF FRAUDS—PARTIAL PERFORMANCE OF CONTRACT WHICH IS VOIDABLE.—A partial performance of a contract, which is in contravention of the statute of frauds, does not take it out of the statute. For services rendered or property delivered under such contract, recovery may be had on a *quantum meruit* or *quantum valebat*.—*Wolke* v. *Fleming*—Filed September 26, 1885.

EMBEZZLEMENT—MONEY COLLECTED ON LOTERY TICKET.—Where the indictment charges the defendant with embezzlement of money collected on lottery ticket, and the offense is described as "agent and employe for the purpose of collecting money on a certain lottery ticket," the crime is sufficiently charged. It is no defense that it was a lottery ticket which the statute does not uphold.—*Woodward* v. *State*—Filed Sept. 24, 1885.

IMPOUNDING CATTLE—REPLEVIN—BURDEN OF PROOF.—In an action for the recovery of cattle impounded, the burden of proof is on the defendant to show that the cattle were runing at large on unenclosed land. He must show that the land was wholely uninclosed.—*Nafe* v. *Leither*.—Filed Sept. 25, 1885.

RIPARIAN RIGHTS—LONG ACQUIESCENCE IN A CHANGE IN THE BED OF A STREAM.—Where the channel of a stream has been diverted by one riparian owner, and a co-owner has acquiesced in the change for some time, and other rights have accrued to other parties, the stream cannot lawfully be changed without consent of all interested.—*Burk* v. *Simonson*.—Filed September 24, 1885.

CRIMINAL LAW—INDICTMENT—SIGNATURE PRINTED.—Where the statute requires that an indictment shall be signed by the prosecuting attorney it is a sufficient compliance with the statute if his signature to the indictment be printed and not written.—*Hamilton* v. *State*.—Filed September 23, 1885.

CRIMINAL LAW—ARGUMENT BY COUNSEL—ABUSE OF PRIVILEGE.—If counsel in his argument to the jury speaks of matters outside the record and evidence, and exception is taken by opposing counsel, it is ground for error if the court does not instruct the jury to disregard the objectionable remarks.—*Brow* v. *State*.—Filed Sept. 23. 1885.

TENANT — REMOVING FIXTURES — RENEWAL OF LEASE.—A tenant who makes improvements on a leasehold, may remove them before the expiration of his lease, if he can do so without permanent injury to the freehold. If his lease expires and he enters into a new lease, in which the fixtures annexed by him are not reserved, he is held to have waived his right to remove them.—*Hedderick* v. *Smith*—Filed Sept. 25, 1885.

WILL—CONDITIONAL—CONTSTRUCTION—A will contained the following clause: "If my husband survive me, I desire, at his death, that all I own or may be possessed of shall go to, and become the property of, my beloved step-daughter Harriet E. Gibson." *Held* that said Harriet E. Gibson could not inherit under said will unless the husband of the testatrix, outlived her. —*Gibson* v. *Seymour*.—Filed September 23, 1885.

REAL ESTATE — PERMANENT USER—IMPLIED GRANT.—A party about to negotiate a loan of money on a mortgage, exhibited the property which consisted of city lots nos. 2, 3 and 4 and a strip of 5 feet off lot 5, with improvements thereon. The three lots and strip of 5 ft. was all inclosed in one yard, and one of the houses was in part situated on the five foot strip belonging to lot 5. The loan was made and the mortgage so written as to cover only the three full lots, and not the five foot strip. *Held* that so far as the occupancy of the five foot strip was in the nature of a permanent user, the lien of the mortgage would extend to the five foot strip. To that extent there was an implied grant.—*J. H. M. Life Ins. Co.* v. *Patterson*.—Filed Sept. 15, 1885.

SUPREME COURT OF IOWA.

PRACTICE—IMPROPER REMARKS BY COUNSEL IN ARGUMENT.—When the line of argument by counsel is not objected to, and the trial court refuses a new trial based upon the improper line of argument, the appellate court will not reverse the judgment on that grounds. The question of contributory negligence is a question for the jury.—*Ross* v. *City of Davenport*—Filed June 12, 1885.

TELEGRAPH COMPANY—NOT LIABLE FOR ERROR WHICH CAUSES LOSS OF PROSPECTIVE PROFITS ONLY.—A telegram sent from Vicksburg, Michigan, was sent to plaintiff, and when delivered to him as written and sent from Vicksburg, Mississippi, in consequence of which plaintiff failed to give his order for certain goods from which it subsequently appeared, he would have made a profit had he given his order. In an action against the telegraph company for his prospective damages, *Held* that he could not recover.—*Pennington* v. *W. U. Tel. Co.*—Filed June 13, 1885.

AGENTS ACTING FOR BOTH PARTIES—COMMISSIONS—ASSIGNMENT OF ERRORS.—An agent of a corporation about to purchase machinery for his principal is offered a commission by the vendor, if he will consummate the sale. He accepts and is paid part of the agreed commission. Upon refusal to pay balance, it is *held* that he may recover of the vendor as agreed. A cause appealed on an assignment of error on the point that the trial court overruled a motion for a new trial is insufficient.—*Leekins* v. *Nordyke & Marmon Co.*—Filed June 9, 1885.

PRACTICE — SECONDARY EVIDENCE — MORTGAGE FOR A LARGER SUM THAN THE DEBT—FRAUD.—Where secondary evidence is offered upon the trial, and is not objected to, upon appeal the ojection that it is not primary evidence cannot be urged. A mortgage given for a larger sum than the real debt, is a badge of fraud.—*Taylor* v. *Weneling*—Filed June 13, 1885.

HOMESTEAD—PART OF BUILDING USED FOR BUSINESS PURPOSES.—Where the cellar, first and fourth floor of a building are used for business purposes, and the remainder of the building used for a dwelling, *Held* that it is not exempt from execution for debt on

the claim that it is a homestead.—*Johnson* v. *Moser.*—Filed June 12, 1885.

EXECUTION—CLAIM BY THIRD PARTY—FAILURE OF CREDITOR TO GIVE BOND—NEW EXECUTION.—Where an execution is issued, and when levy is made the property is claimed by a third party, and the sheriff demands a bond of indemnity which the creditor refuses to give. *Held* that a new execution may issue and levy again made. —*Clark* v. *Reiniger.*—Filed June 11, 1885.

ATTACHMENT—WHAT IS A VALID LEVY—EVIDENCE OF FRAUDULENT TRANSFER.—An officer, in making a levy of attachment, must do that which amounts to a change of possession. Simply barricading the door of a building in which the goods are, is not a valid levy. Where the price paid for goods is wholely inadequate, it is a badge of fraud and may be considered with other evidence on the question of fraud.—*Bickler* v. *Kendall*—Filed Sept. 23, 1885.

NECESSARIES—SOLD TO WIFE IN DISREGARD OF NOTICE TO CONTRARY BY HUSBAND.—Where a merchant sells household necessaries to a wife after receiving notice from the husband not to do so, he cannot recover of the husband for the same, if the husband is in the habit of furnishing a reasonable supply for use of the family.—*Devendorf* v. *Emerson.*—Filed September 23, 1885.

DEFECTIVE SIDEWALK—INJURY—DAMAGES.—A party knowing that a sidewalk is in bad condition and yet goes upon it in the darkness of the night time, when there is another walk which he might take, is guilty of contributory negligence and cannot recover for injury received.—*McGuity* v. *City of Keokuk*—Filed Sept.

PRACTICE—NEWLY DISCOVERED EVIDENCE—INSTRUCTION.—Where a motion is made for a new trial on the ground of newly discovered evidence, which if true would defeat recovery, the motion should be granted. When instructions have been submitted and given to the jury, and the opposite party requests substantially the same instruction to be given, it is not error for the court to refuse to give it.—*Spears* v. *Town of NetAyr* —Filed Sept. 24, 1885.

TAXATION — EXEMPTION — FORMER EXEMPTION NOT CONCLUSIVE SUBSEQUENTLY. —Where property has been adjudged exempt one year, that is not conclusive as to its being exempt another year. A claim of exemption must be specifically shown.—*Tubbessing* v. *City of Burlington.*—Filed Sept. 23, 1885.

SALE OF INTOXICATING LIQUORS—DAMAGES—LIEN ON PROPERTY.—Where the petition, in an action for damages for illegally selling liquor, does not alleged ownership of the lot on which the saloon stands, evidence must be introduced to show that fact, otherwise the judgment for damages will not be a lien upon the land.—*Flint* v. *Gauer*—Filed Sept. 23, 1885.

ABORTION — INDICTMENT—IMPLIED MALICE.—Where drugs are administered with intent to produce an abortion malice will be implied. Upon a trial of a charge of abortion the fact of pregnancy, must be shown. Legal malice is embraced in any act willfully done which the party knows will injure another in his person or property. Filed Sept. 22, 1885.

CONTRIBUTORY NEGLIGENCE — BURDEN OF PROOF—APOTHECARIES.—In an action for damages resulting from negligence, it is incumbent on the plaintiff to show that he is entirely free from fault. Where a person orders a prescription at a drug store, and the druggist makes a mistake, and takes the wrong medicine, and the party subsequently goes to the same jar from which he saw the druggist take the drug, and helps himself and thereby, in consequence of the druggists former mistake, he gets the wrong medicine,

he is guilty of trespass in so taking the medicine, and the druggist is not liable for damages.—*Gwinn* v. *Duffield.*—Filed Sept. 23, 1885.

MURDER—EPILEPTIC MANIA AS A DEFENCE—EXPERT TESTIMONY.—Where epileptic mania is set up as a defense in a trial for murder, it is error for the court to instruct the jury that the testimony of experts in behalf of the defense, is the lowest kind of testimony, and that it ought not to be allowed to overthrow positive testimony.—*State* v. *Townsend.*—Filed September 24, 1885.

EXEMPLARY DAMAGES—EXCESSIVE.—The amount of punative damages which may be given is largerly in the discretion of the jury, and an appellate court will not disturb the judgment on the verdict unless malice on the part of the jury is apparent and irresistible.—*Saunders* v. *Mullen*—Filed Sept. 24, 1885.

TAX—WHERE A LIEN ON PERSONAL PROPERTY.—Where taxes have been assessed on personal property, and before payment of the tax the property is sold and transfered the lien for taxes does not follow the property into the hands of the purchaser. An attempted sale of the property for the taxes may be enjoined.—*Jaffray* v. *Anderson.*—Filed Sept. 23, 1885.

SUPREME COURT OF MICHIGAN.

WILL.—AEVANCEMENTS UNDER—HEIR'S TESTIMONEY.—A testator's certificate of an admancement is not, of itself, sufficient to establish the fact of advancement, unless proof of payment is made otherwise. Heirs are not excluded from testifying in a question of advancement and distribution, as being adversely interested to the representative of their testator's estate.—*McClintock's Appeal*—Filed Sept. 29, 1885.

TRUSTEE—ASSIGNMENT FOR BENEFIT OF CREDITORS—DEBT DUE TRUSTEE—SET OFF.—Where a party is appointed trustee, and funds placed in his hands for safe keeping, a general assignment for the benefit of creditors is made, including the funds in his hands, if the trustee in his invidual capacity, is a creditor of the assignor, he cannot off-set his claim against the funds in his hands. A debt due him in his individual capacity cannot be off-set against a debt due as trustee.—*1st Nat. Bank* v. *E. T. Barnum etc.*—Filed Sept. 29, 1885.

TAXATION—COMPANIES OWNING CARS, AND CARRYING FREIGHT, NOT A RAIL ROAD COMPANY.—A company, other than a rail-road company, owning cars and carrying freight, is subject to be taxed upon its gross receipts. The act imposing the tax affects residents and non-residents alike.—*Fargo* v. *Auditor General.*—Filed Sept. 29, 1885

SUPREME COURT OF MINNESOTA.

VENDOR AND VENDEE—SALE ON CONTRACT—MORTGAGE.—The vendee of lands under a contract of sale has an interest which may be subject to a mortgage. A mortgagee has only a lien, and not the legal title to the land mortgaged. A release in bar of the mortgagee's equity of redemption must be fairly obtained. If any undue advantage is taken of the debtor by the creditor, by reason of his needy circumstances, the mortgage may be set aside.—*Niggeller* v, *Maurin*—Filed Aug. 14, 1885.

TREE CLAIM—MAY BE ASSIGNED—Where a party has entered land under the act of congress as a tree-culture claim, such claim may be assigned, the assignee enter and enjoy the benefit of the original entry, provided the assignor makes and delivers a proper relinquishment within the required time. The mere consent of the assignor that the assignee might take possession is insufficient.—*Palmer* v. *March*—Filed Aug. 14, 1885.

PRINCIPAL AND AGENT—REVOCATION—SUBSEQUENT SALE.—Where a land owner

has appointed several agents for the sale of the same tract of land, a sale by one of the agents is a revocation of the authority of all the others, No action will lie for damages on a subsequent sale.—*Ahern* v. *Baker*—Filed July 25, 1885.

RAILROAD COMPANY—RIGHT TO DESIGNATE THE PLACE TO RECEIVE GRAIN.—Where a railroad company has a warehouse of its own, it may designate such warehouse as the only place where it will receive grain for shipment to the exclusion of any other warehouse at the same station, and it is not bound to furnish cars for shipment of grain from any other warehouse.—*Rhodes* v. *N. P. Ry. Co.*—Filed July 24, 1885.

CORPORATION—ELECTION OF DIRECTORS—RIGHT TO VOTE.—At a regurlarly called meeting of the stockholders of a corporation, where not otherwise provided by the charter or by-laws, a majority of the votes cast will prevail, without regard to the amount of stock represented. In such case it is for the meeting, and not for the president, to determine who has the right to vote.—*Martin* v. *Chute*—Filed Aug. 16, 1885.

CHATTLE MORTGAGE—LEGAL TITLE IN MORTGAGEE—RECOVERY OF POSSESSION—DEMAND.—The legal title to personal property under chattle mortgage vests in the mortgagee without foreclosure, subject to the right of redemption. When property has been wrongfully taken possession of, an action for its recovery will lie without any demand having previously been made for its return.—*Kellogg* v. *Olson.*—Filed Aug. 10, 1885.

DEFECTIVE SIDEWALK—LIABILITY OF CITY FOR PERSONAL INJURY.—Where a municipality is invested with power to construct and keep in repair the streets and sidewalks it is liable for negligence in failing to keep them in proper repair. On a trial, evidence may be given as to the condition in which the sidewalk has been for a time previous to the injury complained of.—*Kellogg* v. *Janeville*—Filed Aug. 14, 1885.

FUGITIVE FROM JUSTICE—HABEAS CORPUS—REQUISITION.—A requisition of the governor of another State for the surrender of a fugitive from justice must contain three things: 1. He must be demanded by the executive of the State from which he fled. 2. A copy of an indictment found, or an affidavit made before a magistrate, charging him with having committed the crime specified, and 3rd such copy of the indictment or affidavit must accompany the requisition and be certified as authentic by the executive of such State. When these requisitis are complied with a warrant of surender may be issued,—*State* v. *Richardson*—Filed Aug. 14, 1885.

RESISTING AN UNLAWFUL ARREST—ORDINANCE EMBRACING MORE THAN ONE SUBJECT.—In resisting an arrest by a peace officer, even though the arrest be unlawful, the taking of the officer's life is not justifyable. A city ordinance against "misdemeanors, breaches of the peace and disorderly conduct," is not subject to the objection that it embraces more than one subject.—*State* v. *Cautiency.*—Filed July 10, 1885.

SUPREME COURT OF NEW JERSEY

CONTRACT—DELIVERY OF GOODS IN INSTALMENTS—DEFAULT.—Where by a contract in the sale of goods, the property is to be delivered in instalments and payment made likewise, default as to one instalment will not relieve the other partv from the whole contract unless the defaulting party shows an intention of abandoning the contract.—*Blackburn* v. *Reilly.*—Filed June 1885.

CORPORATION—BILL FOR RECEIVER—DISCRETION OF CHANCELLOR.—The statute provides for the voluntary dissolution and closing up of the business of a corporation. The chancellor is also authorized, upon the dissolution of a corporation to appoint a receiver. The power of the chancellor to

interfere and oppoint a receiver is a discretionary power. In a bill for the appointment of a receiver, declarations that the corporation is insolvent are not sufficient. The facts must be shown from which insolvency will appear.—*N. F. Ry. Con. Co.* v. *Shack*—Filed June, 1885.

SUPREME COURT OF NEW HAMPSHIRE.

WILL—SIGNING AND SEALING IN PRESENCE OF WITNESSES—EVIDENCE IN CONTESTING—It is not necessary that the subscribing witnesses to a will sign in the presence of the testator, or in presence of each other. The testator's acknowledgment that the seal and signature are his, with a request to the witness to attest the instrument, is sufficient. Formerly the contestant of a will could not testify by reason of his interest, but under the present statutes, if it is apparent that to exclude his testimony would work injustice, or if the excutor elects to testify in the case, his testimony may be taken..—*Welch* v. *Adams*—Filed July 31, 1885.

SUPPEME COURT OF NEVADA.

CORPORATION — SUIT BY A CREDITOR AGAINST STOCKHOLDER.—A corporation becoming insolvent, and subscription to stock remaining unpaid, a creditor may maintain an action against a stockholder, and it is not necessary that he first try to induce the company to call in the subscription to the stock. Such subscription is a continuing liability and the statute of limitations will not run against it, until set in motion by some adverse proceeding.—*Thompson* v. *Reno Star Bank*—Filed Sept. 18. 1885.

SUPREME COURT OF NEBRASKA.

CRIMINAL LAW—COMPETENCY OF JUROR—IMPROPER ARGUMENT OF ATTORNEY.—An opinion formed by a juror does not disqualify him from serving on the jury, unless it appear that he cannot render an impartial verdict. If an attorney in his argument to the jury goes outside of the evidence, unless objection is made at the time, and the ruling of the court had, the question as to the propriety of the argument cannotbe reviewed by the appellate court.—*Bohannan* v. *State.*—Filed Sept. 3, 1885.

CONTINUANCE—TAXATION OF COSTS.—Where the statute requires the county court to continue all cases not disposed of at the end of the term it does not deny the judge the right to try the cases at any time during the month upon an agreement to that effect. When costs have been wrongfully taxed the proper remedy is by motion to the court for a retaxation of the costs.—*Cozini* v. *Hatch*—Filed Sept. 2, 1885.

SALVAGE — BRIDGE WASHED AWAY BY FLOOD.—Where a bridge was carried off by high water, and while floating down stream is caught and taken to the shore, and the owner notified, the party rescuing the same is entitled to the salvage in the same of ten per cent. of the value of the property saved.—*B. & M. R. R. Co.* v. *Young Bear*—Filed Aug. 25, 1885.

EXECUTION SALE—NOTICE BY PUBLICATION.—The Code provides that notice of sale of real estate upon exceution must be given "for at least 30 days &c." Such requirement is not satisfied by one insertion in a paper 30 days before the sale, but the notice must be published during the 30 days as often as the paper is published in which it is inserted not less frequently than weekly.—*Lawson* v. *Gibson*—Filed Sept. 15, 1885.

NEGLIGENCE — A QUESTION FOR THE JURY—INSTRUCTION.—Where a question of fact in which negligence is involved arises, on which persons may honestly differ, it is properly a question for the jury. It is not error for the court to refuse to repeat instruction already given to the jury.—*Lincoln* v. *Gillilan*—Filed Sept. 15, 1885.

EMINENT DOMAIN—CONDEMNATION BY A RAILWAY COMPANY.—Before a railway company can lawfully enter upon land con-

demned for right of way, the damages must be assessed and must be paid to the land owner, or into the county court. If entry upon the land is made before this is done the company is a trespasser.—*Republican Valley Ry. Co.* v. *Fink.*—Filed September 17, 1885.

PROMISSORY NOTE—AMOUNT DUE—DECLARATION.—Where a copy of a note is set out in the petition, the complaint must allege a certain amount due on the note from defendant to plaintiff, unless that fact may be clearly inferred from other facts set forth. —*Spellman* v. *Frank*—Filed September 15, 1885.

ASSIGNMENT OF DOWER—JURISDICTION OF THE COUNTY COURT.—Where a widow is entitled to dower in her deceased husband's estate, the county court in which the estate is settled may assign her dower, although some of the lands belonging to the estate may lie in other counties, unless the heirs or some one in interest objects to such assignment.—*Guthman* v. *Guthman*—Filed Sept. 15, 1885.

PAUPERS—CIVIL DAMAGES.—A pauper who receives his support from relatives, may maintain an action against a vendor of intoxicating liquors for the death of such relative, caused by intoxicating drink sold to him.—*McClay* v. *Worrell*—Filed Sept. 4, 1885.

CONTINUANCE—ORDER MADE ON A LEGAL HOLLIDAY.—A cause continued by agreement till a certain day, which is a legal holliday, and on this legal holliday an order of court is made for a further continuance, *Held* that the order is a nullity, but as the legal holliday was beyond the term, the statute continued the case.—*Moore* v. *Herron*—Filed Sept. 1, 1885.

CONTRACT OF INFANT—RECISION.—An infant purchasing personal property for which he gives his promissory note, which does not fall due until his majority, cannot retain the property and plead infancy as a defence. *His* Contract is voidable, not void. — *Philpot* v. *Sandwich Mfg. Co.*— Filed Sept. 1, 1885.

MINOR'S SALE OF REAL ESTATE—DISAFFIRMANCE.—A minor son conveys real estate to his father who is in possession, and the father soon after dies. Four years after the son attains his majority he executes a mortgage on the property. Such mortgage will not amount to a disaffirmance of the sale made to his father during his minority. —*Buchauan* v. *Griggs.*—Filed September 17, 1885.

PUBLIC OFFICER—PAY FOR EXTRA WORK. —A public officer must discharge all the duties of his office for the compensation allowed by law. The law will not tolerate the allowance of extra compensation for the discharge of a plain duty.—*Bayha* v. *Webster Co.*—Filed Sept. 17, 1885.

NEW YORK COURT OF APPEALS.

INJURY TO SERVANT — LIABILITY OF MASTER FOR NEGLIGENCE.—Where a servant is injured by reason of the want of proper care on the part of the superintendent of the work being done by the servant, the employer is responsible. Where a master has performed all his duties with care, the servant being injured while at work, cannot recover for the injury.—*Panizar* v. *T. F. Mining Co.*—Filed June 9, 1885.

DEED—GRANTEE ASSUMING MORTGAGE DEBT—GRANTOR REMAINS SURETY.—In a conveyance of land incumbered by mortgage and a clause in the deed provides that the grantee assumes the grantor's bond and mortgage, the grantor becomes the grantee's surety for the payment of the obligation. A judgment is conclusive both as to questions litigated, and those that were within the issues before the court.—*Fairchild* v. *Lynch*—Filed June 9, 1885.

COMPROMISE—FRAUDULENT REPRESENTATIONS—MUTUAL CONCESSIONS.—A settlement of matters in dispute amicably implies concessions on both sides, and if fairly made the compromise agreement will be sustained. But where one of the parties has been overreached by fraudulent representations of the other, recovery may be had by the party defrauded.—*Gould* v. *Cayuga Co. Bank*—Filed June 9, 1885.

PRACTICE—STENOGRAPHER'S NOTES ON FIRST, USED ON SECOND TRIAL—TIME ALLOWED FOR ARGUMENT.—In a second trial of a cause, counsel cannot read the report of the testimony of a witness given on the first trial, while the same witness is under examination, unless the accuracy of such report is first established. It is a matter within the discretion of the court to determine how much time counsel may have for argument. *Rehberg* v. *City of New York*—Filed June 9, 1885.

MUNICIPAL CORPORATION—BAD CONDITION OF SIDEWALK—LIABILITY OF CITY FOR DAMAGES.—Whether a sidewalk was in reasonably good condition at the time an injury was received is a question for the jury. A person has a right to use a sidewalk knowing it to be in bad condition, and it is not contributory negligence to go upon it. Permitting ice and snow to accumutate so as to render travel extremely dangerous will make city liable.—*Bullock* v. *New York City*.—Filed June 9, 1885.

CONSTITUTIONAL LAW—AN ACT ABSOLUTELY PROHIBITING CERTAIN INDUSTRY.—An act, which by its terms absolutely prohibited the manufacture of any oleaginous substance from any other than pure milk to take the place of butter, is declared unconstitutional. An act also declaring it to be a criminal act to sell an article as a substitute for pure butter declared unconstitutional.—*People* v. *Marx*—Filed June 16, 1885.

PROMISSORY NOTE—INDORSEMENT IN BLANK—AUTHORITY TO FILL BLANKS.—Where a note is indorsed in blank as to the amount, the payee and the date, the holder has a right to fill in the blank, but has no authority to add in the face of the note "with interest." Such additional words is a material alteration.—*Wyerhauser* v. *Dun, et al.*—Filed Oct. 6, 1885.

SPUREME COURT OF PENNSYLVANIA.

SALE OF BUSINESS—RESCINDING CONTRACT AND SUING IN TORT FOR FRAUDULENT REPRESENTATION.—Where one purchases the business and good will of another, and the profits of the business does not prove to be as great as represented, the purchaser cannot rescind the contract and sue in tort for fraudulent representations. The remedy is for a breach of contract. The purchaser's bank book is not evidence of the profits of of his business.—*Taylor* v. *Saurman*—Filed June 6, 1885.

ASSIGNMENT FOR BENEFIT OF CREDITORS APPRAISMENT—BOOK ACCOUNTS SOLD FOR LESS THAN APPRAISED VALUE.—When goods are sold by an assignee at public sale, and bring less than the appraised value, it is no evidence of negligence of the assignee. Where book accounts are sold after the assignee has collected what he could, and the purchaser succeed in collecting some of them subsequently, the assignee cannot be surcharged with the amount.—*Sprenkle's Appeal*—Filed June 6, 1885.

EXECUTOR—INCOMPETENT WITNESS IN HIS OWN INTEREST.—L. and C. are co-executors and before they are discharged, L. dies, and C. becomes L.'s administrator. C. in filing his account of the estate of which he was co-executor, alleges that a certain sum was used by his co-execntor and invested in real estate, and offering his own testimony in support of the fact, his testimony is excluded. His liability for the alleged sum so invested depends upon his establishing the fact as alleged in the

account.—*Heydricks Appeal*—Filed June 6, 1885.

STATUTE OF LIMITATIONS—NEW PROMISE—WHAT IS VALID.—A new promise, in order to take a debt out of the statute of limitation must be distinct and unequivocal. If the debt is evidenced by a note, the note must be produced and identified, and the amount or balance due must be mentioned. —*Landis* v. *Roth.*—Filed June 6, 1885.

WILL—CONSTRUCTION OF—RIGHTS OF WIDOW.—A testator directed that his estate, remain in the family for one year and then be divided, giving his widow one third and the children share and share alike in the balance, At the expiration of one year partition and division was made, when two of the children took the property at the appraised value, agreeing to pay the portion due to others of the children, and to pay the interest on the widow's third to her annually. In 1882 the widow brought suit to recover the principal or her third, on which she had been receiving interest, and obtained judgment for the same. *Held* that this judgment was right, that she had a fee in the estate to the extent of one third.—*White* v. *Commonwealth*—Filed June 6, 1885.

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SUPREME COURT OF RODE ISLAND

CONTRIBUTORY NEGLIGENCE—QUESTION FOR THE JURY.—On a dark night, a train on which plaintiff was, stopped a short distance from the depot, where he intended to get off. Plaintiff supposing the train was at the depot got off, and in crossing the track was struck by an engine and injured. At this station it was the custom of passengers to get off at either side of the train without any caution by the officers or employes of the road. On trial in an action for damages, *Held* that the question of contributory negligenceon on part of plaintiff was properly a question for the jury.—*Boss* v. *P.* & *W. Ry. Co.*—Filed July 25, 1885.

RECENT TENNESSEE DECISIONS.

(Taken from the Southern Law Times.)

Opinions delivered Oct. 3, 1885.

J. M. Aanderson, et al. v. *J. D. Akard, et al.*

COOPER, J. affirming.

1. CHANCERY—PROOF REQUIRED TO SET UP LOST DEED.—Under a bill filed to set up a lost deed, if the evidence clearly establish the proximate date of the deed, the names of the grantor and grantee, the signing and delivering of the deed, and that the conveyance was of forty acres of a designated end of a seventy-five acre tract, the complainant would be entitled to have the deed set up, and title vested and divested accordingly, even if the precise metes and bounds set out in the original deed could not be ascertained. And if the proof shows, in addition, that the boundaries of the land were pointed out by the grantor by the calls of the grant, beginning at a particular tree on one side of the tract and running around to a particular tree on the other side, and closing the boundaries by a straight line from one of these trees ot the other, and that these boundaries were included in the deed, the boundaries of the grant by actual survey between the designated trees and a straight line from one to the other, may properly be embodied in the deed, although the witnesses present at the making of the deed cannot recollect the courses and distances actually called for in the lost deed.

2. SAME—BILL QUIA TIMET.—Any person having a legal or equitable interest in land, however small, whose possession is endangered by suit, and even without suit, may come into equity to set up a deed lost before registration, by bringing before the court all persons having an interest in the land, and the title of the complainant in in such a bill may be confirmed by a deed of confirmation made after the filing of the bill.

3. LOST DEED—LIMITATIONS.—Neither the statutes of limitations nor lapse of time have any application to a bill to set up a lost deed by a person in possession of the land conveyed therein.

Citing Whitfield v. *Fausset*, 1 Ves. 392;

Dulston v. *Coatsworth*, P. W. 731; *Hord* v. *Baugh*, 7 Hum. 576; *Brien* v. *O'Shannessy*, 3 Lea, 724; *Lewis* v. *Brooks*, 6 Yer. 167; *Portland* v. *R. R. Co.*, 4 Lea, 414, 418; *Caldwell* v. *Palmer*, 6 Lea, 652.

J. A. Goodwin v. *M. E. Thompson.*

COOPER, J.; reversing.

GRANT OF SOIL UNDER NAVIGABLE STREAM —The soil below the low water mark of a river navigable in a legal sence, as well as the use of stream for purposes of navigation. belongs to the public, the title being vested in the State for the use of the public. The title to this soil cannot be acquired by an individual under our general laws relating to land-grants, and a grant thus obtained, which undertakes to include the bed of such navigable stream and purports to give to the grantee the exclusive privilege of taking soil and sand and other deposits from such bed, is to this extent void.

QUAERE.—Whether the Legislature, upon general principles and under our constitution, can by express grant confer upon an individual the exclusive title to the soil under a navigable stream, especially after Cangress has undertaken to improve the navigability of the stream? *Semble* not.

Citing Elow v. *Burrus*, 6 Hum. 359; *Martin* v. *Vance*, 3 Head, 649; *Sharp* v. *Clark*, 2 Swan, 10; *Posey* v. *James*, 7 Lea 98; Hale *De Zure*, Maris, Ch. 3. 3; *Warren* v. *Mathews*, 6 Mod. 73; The Royal Fishery of the River Baune, Davies, 149; *Steamboat Magnolia* v. *Marshall*, 39 Miss. 109; 3 Wash. R. P. 359; *Commonwealth* v. *Roxbury*, 9, Gray, 492; *Roberts* v. *Cunningham*, M. & Y. 67; *R. R. Co.* v *Scheurmeir*, 7 Wall. 272.

H. H. Taylor, for plaintiff.

R. N. Hood, for defendant.

Maria Cloyd v. *Thomas J. Cloyd et al.*

COOPER, J. affirming.

DOWER — PARTITION — PRESUMPTION.—Under a voluntary partition between a widow and two heirs of lands descended, in which the widow receives one-third including the dwelling and improvements, the presumption of law is that the widow's allotment was in dower, and the execution by the parties of a penal bond conditioned to abide the partition will only strengthen the presumption.

E. T. V. & G. R. R. Co. v. *Benj. Rush.*

COOPER, J., reversing.

1. RAILROADS—STATUTE AGAINST ACCIDENT NOT APPLICABLE TO SERVANTS.—A brakeman employed to give a danger signal to a moving train, who goes to sleep upon the roadway and is injured by the train he is sent to signal, cannot sue the company for damages under T. & S. Code, § 1166 et seq.

Citing R. R. Co. v. *McKenra*, 7 Lea, 313; *R. R. Co.* v. *R. Eidmond*, 11 Lea, 205; *Holder* v. *R. R. Co.*, 11 Lea, 176; *R. R. Co.* v. *Robertson*, 9 Heisk, 276; *Haley* v. *R. R. Co.*, 7 Bax. 239; *R. R. Co.* v. *Bnrke*, 6 Cold, 45; *Cox* v. *R. R. Co.*, 3 Lea Rep. 168.

2. SAME.—An action for damages will not lie for a personal injury, caused by a collision with a moving train under section 1166 *et seq.* T. & S- Code, in behalf of a servant, whose negligence caused, or contributed to cause the collision.

3. SAME—FELLOW SERVANTS.—Several employes of a railroad company, although of different grades, when employed in a common service, are fellow servants within the rule that a servant undertakes to run the risks of injuries from the negligence of his fellow servants. And an engineer on a passenger train and a brakeman on a freight train of the same company at a depot, who is ordered by the conductor of his train to go forward upon the track to display danger signals to the passenger train, are fellow servants for the purpose of bringing the train safely into the depot.

Citing Railway v. *Handman* 13 Lea, 423, *R. R. Co.* v. *Wheless* 10 Lea 741, *R. R. Co.* v. *Gurley*, 12 Lea, 46.

W. M. Baxter, for plaintiff in error.

S. J. Kirkpatrick and *Ingersoll* & *Cocke*, for defendant in error.

John L. Collins v. *The State.*

DEADRICK, C. J., affirming.

1. CRIMINAL LAW—FRAUDULENT BREACH OF TRUST—VENUE.—An agent who was employed to transport and sell chattles in another county than the residence of the principal, returning gave a false statement of the price received and delivered only the false amount; upon a subsequent demand by the principal, the agent repeated his false statement and refused to deliver the balance of the price received by him. *Held* the agent was properly convicted of a felonious breach of trust and the venue was correctly laid in the county where payment was demanded and refused.

2. SAME—NEW TRIAL—SEPARATION OF JURY.—A new trial will not be granted of an indictment for a felony merely because the jury were permited to separate and some of their number talked with strangers to the suit, when it clearly appears the conversation was upon subjects unconnected with the charge and trial.

Jessie L. Rogers, for Collins.

Walter M. Cocke, for the State.

SUPREME COURT OF WISCONSIN.

RAILWAY CROSSING—COLLISION WITH WAGON—CONTRIBUTORY NEGLIGENCE.—Although it be a statutory obligation upon the railway company to blow the whistle and ring the bell on the engine as it approaches a crossing of a highway, yet if a person crossing fails to use the ordinary care, and fails to see or hear the engine when he might have done so, and thus avoid injury. he cannot recover for damages resulting from a collision.—*Williams* v. *C. M. & St. P. Ry. Co.*—Filed Sept. 22, 1885.

CHATTLE MORTGAGE—ISSUE OF COWS UNDER MORTGAGE—RIGHTS OF MORTGAGEE—Where cows are the subject of a chattle mortgage, and during the existence of the mortgage the cows drop calves, the lien of the mortgage extends to the issue, and upon foreclosure of the mortgage, the mortgagee is entitled to the calves.—*Funk* v. *Paul.*—Filed Sept. 22, 1885.

AMBIGUOUS DESCRIPTION—RECORDS CITED IN THE DEED—EXTRINSIC EVIDENCE.—Where the description of land, as given in the deed is ambiguous, and in the description reference is had to certain records in the claim of title, such records are admissible to give certainty to the description in the deed.—*Meade* v. *Gilfoyle*—Filed Sept. 22, 1885.

CRIMINAL LAW—AIDING AND ABETTING—JUSTIFICATION—BURDEN OF PROOF.—If a person goes with others, to a certain place, for the purpose of fighting, he may be liable for an assault committed by others at the place named, although he does not participate in the fight. When the defendant, in an assault, pleads in justification, the burden of proof is on him to establish the plea.—*Rinehart* v. *Whitehead.*—Filed Sept. 22, 1885.

PRACTICE—APPEAL FROM AN ORDER.—Where the minutes of the court and the testimony in the case, were used in applying for an order, and the application denied, the question as to the abuse of the discretion of the court cannot be reviewed by the appellate court unless the minutes of the lower court, and the evidence in the case is presented to the appellate court.—*Bunn* v. *Valley Lumber Co.*—Filed Sept. 22, 1885.

MUNICIPAL CORPORATION — DEFECTIVE SIDEWALK.—Where a sidewalk is not level, but inclines three and three-fourths inches in a distance of two and one-half feet, it is not such a defect as will make the city liable for damages for a personal injury caused in part thereby.—*Schroth* v. *City of Prescott*—Filed Sept. 22, 1885.

CHATTLE MORTGAGE—INSURANCE MONEY—RIGHTS OF MORTGAGEE.—A building is erected upon leased land with the privilege of removing it at the expiration of the lease.

A mortgage is executed upon the building to secure payment of borrowed money. It is treated as a chattle mortgage, and is filed with the town clerk instead of with the city clerk of the city in which the property is situated. The building is insured and the policy made payable to mortgagee, "as his interest may appear." *Held* that the irregularity of filing with the town clerk did not invalidate the mortgage and the mortgagee might recover.—*Manson* v. *Phœnix Ins. Co.*—Filed Sept. 22, 1885.

PUBLIC HIGHWAY—TRAVEL DIVERTED BY A WASHOUT—LIABILITY OF TOWNSHIP.—By statute a road becomes a public highway by continued use as such for 10 years. Where a public highway becomes defective by reason of a washout, and travel is diverted around such break or defect, and a traveller is injured by driving into the defective place in the dark, the township is liable for damages for injury caused.—*Hart* v. *Town of Red Cedar*—Filed Sept. 22, 1885.

CHATTLE MORTGAGE—CHATTLES CONSISTING OF PROVISIONS TO BE USED BY MORTGAGOR.—The rule that a chattle mortgage is void when the mortgagor is premitted to sell the mortgaged goods, and apply the proceeds to his own use, does not apply where the chattle mortgage consists of provisions which the mortgagor is permitted to use and consume, if the mortgagee has an interest in having the property thus consumed.—*Knapp. Stout & Co.* v. *Dietz.*—Filed Setp. 22, 1885.

OBSTUCTION OF NAVIGABLE RIVER—DAMAGES.—Where a railroad bridge is an obstruction of a navigable river, and where parties are delayed thereby in lawfully floating lumber and are caused increased expense thereby, they may recover damages therefor from the railroad companyr—*Gates* v. *N. P. R. R. Co.*—Filed Sept. 22, 1885.

VESSELS—JOINT OWNERS—ACTION BY—One joint owner of a vessel cannot maintain an action against his co-owner for conversion except in case of total loss of the vessel, or that which amounts to total destruction by his negligence.—*Alderson* v. *Schultze.*—Filed Sept. 22, 1885.

BASTARDY—EXHIBITING CHILD TO JURY—COMMENTS BY COUNSEL.—In trial for bastardy it is not proper to allow the child to be exhibited to the jury to show that it resembles the reputed father, such exhibition being made and comments on the same by counsel is cause for a new trial.—*Hauawalt* v. *State*—Filed Sept. 22, 1885.

EVIDENCE — MEDICAL MALPRACTICE — HYPOTHETICAL QUESTION.—In an action for malpractice, defendant may show by expert witness that the treatment given was skilfull and proper In propounding a hypothetical question it is proper to assume as proved all facts which the evidence tends to prove.—*Quinn* v. *Higgins.*—Filed Sept. 22, 1885.

EVIDENCE—CONVERSATIONS HAD WITH PERSONS DECEASED.—In an action by an adminisrrator to annul a contract on the ground of fraud, the defendant cannot testify as to conversations and transactions with the deceased. A widow may testify in her own interest as to all matters coming to her knowledge by other means than conversation with her husband. The delivery of a deed which acknowledges receipt of the purchase money is *prima facie* evidence of payment but may be rebutted.—*Crowe* v. *Colbeth.*—Filed Sept. 22, 1885.

CRIMINAL LAW—PRACTICE—DURESS.—A warrant of arrest which states on its face, by mistake, that the crime was committed after the date of the issue of the warrant, may be amended. A complaint alleging the crime of fornication which fails to state that the woman was unmarried, may be amended. If an arrest is made for the purpose of recovering money it is duress, and damages may be recovered in an action.

—*Heckman* v. *Swartz*.—Filed September 22, 1885.

INFORMAL CONTRACT—RATIFICATION BY IMPLICATION.—Where the majority of the directors of a Bank informally agree to take the property and assume the liabilities of a private bank, and subsequently the corporation does take the assets of the private bank and retains them, it will be assumed that the informal agreement has been ratified and the corporation is liable.—*Bank of N. L.* v. *Kelcham*.—Filed Sept. 22, 1885.

EXECUTION—PRESUMPTION OF FRAUD—EXEMPTION.—Where an insolvent debtor sells property which is not exempt from levy and execution and purchases property which is exempt, the creditor's remedy is by attacking the sale of the property. The law presumes such sale to be made in fraud of creditors.—*Comstock* v. *Bechtel*—Filed Sept. 22, 1885.

PARENT AND CHILD—SUPPORT OF CHILD—EQUITY.—Where the parents of a child lived apart, and the mother supported the child, and the child becoming heir to certain property, subseqently dies and the parents inherit its estate, equity will grant the mother an allowance for what she expended in support of the child.—*Pierce* v. *Pierce*.—Filed Sept. 22, 1885.

COURT OF APPEALS OF MARYLAND.

Love et al. v. *Dilley et al.*

APRIL TERM 1885.

SETTLEMENT OF ESTATE OF DECEDENTS—ADVANCEMENTS—PROMISSORY NOTES—PRESUMPTION OF PAYMENT.

THREE appeals in one record from circuit court, Alleghany county, in equity.

I. H. Gordon, *Wm. Walsh*, *I. F. Seiss*, and *Wm. M. Price*, for appellants.

Brace & *Richmond*, *R. T. Semmes*, and *A. H. Boyd*, for appellees.

BRYAN, J. This is the second appeal in this case. The questions now before us relate to the advancements made by Joseph Dilley to Barney Dilley, and Mr. and Mrs. Edwards, and Mr. and Mrs. Everitt. The deceased, in his life-time, made large advancements to his children, and carefully preserved the evidence of their several amounts. At the time of his death most of them were in a a trunk which was kept in his bedroom. Some of the most important papers which were kept in this trunk have disappeared in a manner which has not been satisfactorily explained. Mrs. Margaret Edwards (daughter of the deceased) testifies that she came to her father's house a few moments after his death; that Barney Dilley and his daughter Edith, (now Mrs. Brace,) the servant Young, and Daniel R. Long were in the house; and that the key was in the trunk and the trunk was empty. She also says that she made an inquiry of Barney Dilley about the books and papers, and that he said that his father never kept any valuable papers about the house. Testimony was given by Mrs. Brace that shortly before his death her granfather burned some of the papers which were in the trunk, and gave her the remainder to put back in it it which she accordingly did; that she next saw the papers three days after his death, in the top of the trunk where she had put them; and that, in the presence of her father, and of Benjamin Edwards, Miss Ida Everitt, and Miss Hoblitzell, she put them in a satchel and delivered the satchel to her father and Edwards. We will see hereafter how these papers have been accounted for.

A great many exceptions were filed in the circuit court to the auditor's reports, and to the evidence. We shall not consider them in detail, but shall examine the conclusions which they are intended to affect; that is, the amounts of advancements which are in question before us.

It is shown very clearly that Joseph Dilley gave his children large sums of money, and that he kept an account of these sums, with the intention that when his estate was distributed after his death each of his children should be charged with the amount he had

received, so that his property might be equally and impartially divided among them. He usually—perhaps always—took notes from them showing the amounts of his gifts. These notes he preserved carefully up to the time of his death. There is some evidence that he also kept an account or memorandum book showing the amounts given to his children; but the proof on the point is not very distinct. Of course, if his notes and papers could be obtained, there could not be the least difficulty in ascertaining these different amounts, and in making a perfeetly fair division of his property among his children. But as in some intances they have disappeared, we are of necessity obliged to rely upon the more uncertain and unsatisfactory evidence set forth in the record. It is morally impossible that our conclusions should be accurate. We at best can only hope to make an approximation to true results. But the blame must rest on those who have destroyed or concealed, the evidence which would remove all obscurity on the subject; and when, from the want of this proof we fall into errors, the loss will justly fall on those whose misconduct has destroyed the means of arriving at the truth.

The circuit court decided that the advancements to Barney Dilley amounted to $21,792.52. His father, through a long series of years, had been supplying him with money, and in the course of this time had taken from him a large number of notes. He was the administrator of his father's estate, and as such administrator it was his duty to take charge of these notes. He states in his testimony that his father told him that he had received from him more than his share of the estate. Other witnesses testify that his father made the same statement to him on different occasions, and he did not question its correctness. Seiss testifies that he said he had given him over $40,000. We suppose that the witness means that this statement was made to Barney, but it is not altogether certain that this is his meaning. Barney, in his answer, states that, with the exception of a certain judgment confessed by him in favor of his father, he has no knowledge of any evidence of his father's intention to charge him with money advanced in any manner; and that his father helped him from time to time with small amounts of money when he was in need, but that he never had the slightest idea at any time that such assistance was intended in any other way than as a gratuity; and that he is unable to say, and that no evidence can be found, as to what said amounts were, in the aggregate, so far as he is concerned, any more than as to his other children; and he insists that it would be "the worst kind of injustice" to construe as advancements the amounts which he had received, for the reason that it is imposible to tell what amounts had, from time to time, been given to his several children by the decedent, or what was his intention as to the manner in which the same should be received.

Appearing as a witness in his own behalf, Barney testifies to various sums of money received from his father, for many of which he states tkat he had given notes. He says that he has not beeu able to find any of the notes which he had given, except two; or any note given by Mr. and Mrs. Edwards; or any given by Dr. Everitt, except those which will hereafter be more particularly mentioned. From the items mentioned in his testimony the author compiled a statement showing that the advancements made to him amounted to $30,894.52. It is found on page 52 of the printed record. All the charges against him in this statement, we think, are correct, except those which we proceed to mention.

We think the amount advanced to go into business with Jesse Bell should be $2,400, instead of $2,500, as found by the auditor. We think that the evidence shows that the amount of $2,500 charged as having been given to buy out White's interest is erroneous. This money was obtained on notes which were paid by Barney Dilley out of his own funds. The amount of $2,000 charged September 18, 1871, evidently represented

the same transaction charged under the date of September 17, the same year; and the charge of $1,000, August, 1869, is for an amount included in the charge of $5,000 advanced to go into business with White. These different sums, aggregate $5,600, and when they are deducted from the statement of the auditor they reduce the amount to $25,294.52. But it is necessary to make some additions to this sum.

In his answer to the sixty-seventh direct interrogatory Barney Dilley indentifies a bundel of notes produced and shown to him by his own counsel, and states that they were accommodation notes, payable to Joseph Dilley and discounted in bank; and in his answer to the sixty-eighth interrogatory he states in detail the time at which each note was paid.

Written exceptions were filed to these answers, in so far as they prove payment of these notes. These exceptions must be sustained, under the decisions of this court on the former appeal. The notes, standing alone, implied an indebtedness to Joseph Dilley, or money advanced by him, and it was not competent, under the evidence act, for the wittness to overthrow this *prima facie* proof by his own testimony. The aggregate amounts are $4,671.77.

In his answer to the eighty-seventh interrogatory Barney says that the amount of $4,000 given to him by his father in a check, which was deposited in his name in the Queen City Savings Bank, was paid out by him for his father's benefit.

A written exception was also filed to this answer, so far as it showed the disposition of the money. The exception must be sustained, for the reason just stated in reference to the notes. All the notes, papers, and checks left by the deceased were, or ought to have been, in the custody of the witness; and it was the duty to produce them for the purposes of investigation. His own testimony is incompetent to repel any legal inference justly arising from them under any circumstances embraced by the evidence act. The fact that the notes were in his possession has no tendency of itself to show that he had paid them. His own unpaid notes would naturally come into his possession after the death of his intestate, and his own qualification as administrator. The possession, therefore, is no distinctive indication of a difference between notes paid by him and those remaining unpaid. As, unquestionably, a number of notes of this last description have been suppressed by the witness, or some one acting in his interest, we should do far less than justice if we did not require strict and distinct proof by competent evidence that the notes produced by the witness were paid by him in the life-time of the intestate, before we discharge him from accountability for them. The addition of these notes and the check to the amount found by the auditor, as above corrected, will give as the result $33,966.29; and this is the amount of advancements chargeable to Barney Dilly.

The circuit court determined that the advancements to Edwards and wife consisted of the Forsythe farm, at $1,500; the Union-street house, at $2,350; the Union-street lot at $950; the note of Edwards and wife for $10,000; and $1,000 in April, 1874,—amonting to 15,800. We think that to this amount should be added the checks of Joseph Dilley drawn to the order of Edwards, and cashed by the Second National Bank, at different times from October, 1872, to May, 1873. These aggregate $5,500, making the amount of advancements $21,300; and we determine that this sum is to be charged to them. We do not think that there is any satisfactory proof that they gave two notes of $10,000 each. Their testimony fixed the date of the notes somewhere in 1878, and states that it represented all the advancements to them, and also that they never gave any other note. They were testifying on their own offer, and their evidence was incompetent under the former decision in this case. As it was excepted to, it must be ruled out of the case. The preponderance of testimony fixes the date of the note in 1873. These witnesses, in their answer to

the bill of complaint, in reference to the question of advancement, make similar statements to those made by Barney Dilley in his answer.

Mr. Seiss testifies that on one occasion Joseph Dilley showed him a number of Dr. Everitt's notes payable to Dilley, and requested him to look at the amount, and that he added up the amounts of the different notes and found the sum to be more than $24,000, without interest. He says the time was soon after the return of Everitt from Parkersburg, where he had been building a barrel factory, and he thinks it was in 1869. He states that some time after this occurrence, at the request of Joseph Dilley, he wrote a note for $7,000, payable to Dilley, which, in his presence, Everitt signed and gave to him, and that this note was in substitution for two others which Dilley then had, and which he said he had paid to I. Philip Roman for Everitt. These notes were signed by Everitt, payable to Joseph Dilley, and endorsed by him. Seiss also testifies that on the day he counted the notes Joseph Dilley said to Everitt something to this effect: "Now you see what I have done. I have kept you ever since you were here, and until the Roman notes are paid; yet you will have more than your share amounts to." There is no question whatever that Joseph Dilley had furnished sums of money to Everitt at different times, and that he had taken his notes for the amounts. But the only notes produced in evidence in this case are ten which are in the ordinary form, and two with powers of attorney attached, authorizing confession of judgments. The largest of these notes is for $2,500, and their total amounts are but little more than $9,000. It is stated that these were not found in the trunk where Joseph Dilley kept his valuable papers, but in and old bureau drawer, in which it was supposed there were no papers of importance. We regret that the evidence is not more certain and distinct; but it is our duty to do justice as far as it is attainable with the materials within our reach. No trace is found for the note for $7,000; nor do the notes which have been produced in evidence amount to anything near the sums which Joseph Dilley stated in Everitt's presence had been given to him. It is very certain that Joseph Dilley never changed his intention that the sums of money which he had given to his children should be charged to them in the distribution of his estate, and there is not the least reason to suppose that he destroyed any of the notes which he had required from his children. We must therefore adopt the calculation made by Mr. Seiss as furnishing the best means of reaching a just conclusion amid the obscurities and embarrassments of this case. The statement of the auditor on page 53 of the printed record is correct. He deducts from the amounts stated by Seiss the notes given by Everitt before his marriage, and the Everitt & Conkling note, and finds the advancements to be $29,511. We think this amount should be charged to the Everitt heirs.

This case is a very peculiar one. The notes which have been suppressed are chargeable to Barney Dilley, Edwards and wife, and the Everitt heirs, while those chargeable to the other heirs of Joseph Dilley have been produced in evidence and charged to them. Barney Dilley and Edwards took possession of Joseph Dilley's notes shortly aftes his death, in the presence of Miss Edith Dilley and Miss Ida Everitt. It would be simply a denial of justice if we should require the other heirs to prove with exactness and particularity the amounts and dates of the suppressed notes. The necessity of the case compels a reliance upon testimony which uuder ordinary circumstances, would be regarded as too vague and indefinite. The law has sometimes been laid down with great severity against those who wrongfully destroy evidence. We may quote a passage or two from Broom, Leg. Max. (7th Ed.) 938: "An account of personal estate having been decreed in equity, the defendant charged the plaintiff with a debt as due to the estate. It was proved that the defendant had wrongfully opened a bundle of papers relating to the account which had been sealed up and left in his hands. It further appeared that he had altered and displaced the papers, and that it could not be known what papers might have been abstracted. * * * * *

The result of our opinion is that the order ratifying the auditor's report and the accounts must be reversed, and the cause remanded, with directions to state accounts in accordance with this opinion. There must be new accounts, but no further testimony can be taken. The cost in this court must be paid out of the estate.

ROBINSON, STONE, and YELLOTT, JJ., took no part.

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The Chicago Law Journal.

CHICAGO, DECEMBER, 1885.

THE INDEX to volume VI. will be sent to subscribers with next issue of the JOURNAL

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ATTORNEY'S FEES—STIPULATION IN A PROMISSORY NOTE—TENDER OF PAYMENT.—Where it is stipulated in a promissory note for the payment of an attorney's fee for collection, if tender is properly made of the amount of the note, without attorney's fee, before suit is brought, no action will lie for the stipulated fee.—*Goss* v. *Bowen.*—Filed Oct. 10, 1885.—Ind.

ADMINISTRATOR—FINAL SETTLEMENT IS CONCLUSIVE ADJUDICATION.—Where a final account has been filed by an administrator, and approved by the probate court, no action will lie against the administrator for wrongful conversion of the funds of the decedent's estate.—*Carver* v. *Lewis.*—Filed Oct. 10, 1885.—Ind.

ATTACHMENT—INTERMINGLING OF PROPERTY—LABORER'S LIEN.—Where an attachment issued at the suit of a laborer, and was levied upon a large pile of logs in which were some of the logs on which the laborer had worked and had a lien. *Held* that the attachment was not invalid because of being levied on some logs on which plaintiff had no lien. It was the duty of the officer to levy upon the whole pile in which was included the logs on which plaintiff had a lien. —*Parker* v. *Williams*—Filed Aug. 6, 1885. —Me.

AMICABLE PARTITION—DEED OF WIFE'S PROPERTY BY MISTAKE MADE TO HUSBAND AND WIFE.—A married woman being one of the heirs to certain lands, partition is amicably made and in executing the deed to her of her portion, it is, by mistake, made to her and her husband. The husband disclaiming any title in the land, in an action commenced by her for trespass, *held* that she had a right to maintain such action in her own name, and evidence tending to show the circumstances of the deed was admissible. —*Dexter* v. *Billings.*—Filed Oct. 5, 1885.—Pa.

ADMINISTRATION — ADMINISTRATOR *De bonis non*—LOST RECORDS.—Where an administrator has resigned and been discharged,

and another appointed, the latter will take up the work of settling the estate where the former left off. If a petition has been filed, for the sale of real estate by the former the latter can proceed upon the petition already filed. Lost records in admistrator's procedings may be proven the same as any other lost records. —*Trumbeell* v. *Williams.*—Filed Sept. 29, 1885.—Neb.

ARGUMENT OF COUNSEL—IMPROPER COMMENTS BY—OBJECTION MUST BE MADE AT THE TIME.—Where stolen goods are found in the possession of defendant, it is not wrong for the prosecuting attorney to state to the jury the presumptions of guilt arising from that fact. Exception must be made at the time to any objectionable remarks by counsel, and have the ruling of the court thereon, otherwise the question cannot be reviewed on appeal.—*McLain* v. *State.*—Filed Sept. 29, 1885.—Neb.

ATTACHMENT—FRAUDULENT TRANSFER—ASSIGNMENT FOR BENEFIT OF CREDITORS.—Where an attachment issues on the ground of fraudulent conveyance of property, and the facts set up on which the attachment issues are denied, the burden of proof is on the plaintiff to sustain the allegation of fraud. Where the alleged fraud is embraced in a general assignment for benefit of creditors the instrument of assignment must show clearly on its face the intentional fraud or the attachment will be dissolved.—*McPike* v. *Atwell*—Filed Oct. 9, 1885.—Kans.

ATTORNEY-AT-LAW—DISBARMENT—AFFIDAVIT ON BEHALF OF CLIENTS.—On an application to disbar an attorney for having filed an affidavit in behalf of his cllent which was false, the fact of perjury must be clearly established or the court will deny the application. The court say, "the present proceeding will have subserved a useful purpose if it shall have a tendency, in any degree, to bring about a discontinuance of the frequent and unnecessary manufacture of affidavits: a practice to which resort is had, too often carelessly and sometimes, we fear, recklessly."—*In Re Disbarment, R. E. Houghton* —Filed Sept. 26, 1885.—Cal.

ACTION ON BOND—COUNTER CLAIM BY SURETY ON THE BOND.—Where an injunction has been dissolved and an action is brought on the bond, the surety, with the consent of his principal, may set up a counter claim against plaintiff.—*Reeves* v *Chamber* —Filed Oct. 6, 1885.—Ia.

ATTACHMENT—PERSONAL SERVICE—CONVERSION.—Where a writ of attachment, issued by a justice of the peace, is levied upon property of defendant, without personal service on defendant and the cause prosecuted to judgment and sale of the property, *Held* that the justice had no jurisdiction of the person of defendant, and plaintiff may be called upon to respond in damages for trespass,—*Rolfe* v. *Dudley.*—Filed Sept. 29' 1885.—Mich.

APPEAL BOND—INSUFFICIENCY OF—RENEWAL.—In an appeal from judgment of a justice of the peace, when the appeal bond is insufficient, upon a motion to dismiss the appeal for want of a sufficient bond, the district court has power to allow a renewal or change of the undertaking to comply with the statute.—*McClelland* v. *Allison.*—Filed Oct. 9, 1885.—Kans.

ATTACHMENT — REDELIVERY BOND — ESTOPPED FROM CLAIM OF TITLE.—Property in possession of mortgagee under a chattle mortgage is attached at the suit of a creditor of the mortgagor. The mortgagee executes a bond to the sheriff for the production of the goods or their value upon the order of the court, and thereupon the property is redelivered to him by the sheriff to await a trial of the right of property. *Held* that the mortgagee is estopped from setting up paramount title, by the execution of the forthcoming bond.—*Case* v. *Steele.*—Filed Oct. 9, 1885.—Kans.

AMERCEMENT OF SHERIFF—NEGLIGENCE IN GFFICIAL DUTY.—Where a creditor suffers loss by reason of neglect of the sheriff, to return a writ of execution, in an action against the sheriff, it may be shown that the debt might have been collected but for the neglect of the sheriff. The measure of damages is the actual loss sustained.—*Crooker* v. *Melick*—Filed Sept. 29, 1885.—Neb.

AUCTIONEER—SALE WITHOUT DISCLOSING OWNER'S NAME—LIABILITY OF, WHEN GOODS ARE REPLEVIED.—An auctioneer, who sells goods without disclosing the name of the owner, and the goods are snbsequently replevied and held by a paramount title, is liable to the purchaser for the money paid. —Filed July 22, 1885.—Md.

ATTORNEY—NOT PERMITTED TO PURCHASE A CLAIM FOR SUING ON.—The statute forbids any attorney or counselor at law, from directly or indirectly, purchasing a claim on which to bring suit, or of purchasing a claim for collection. When such a purchase is made no cause of action exists, and an action for enforcing the demand will not lie. — *Browning* v. *Marvin.* — Filed Oct. 6, 1885.—N. N.

BUILDING ASSOCIATIONS—REBATE OF INTEREST ON DUES PAID IN.—Building associations are presumed to exist for the benefit of borrowing members. The statute requires that dues paid in shall be credited semi-annually and a pro-rata reduction of interest be made to borrowing members.—*Seibel* v. *Bldg. Assn*—Filed Sept. 29, '85—O.

BILL OF LADING—STIPULATION FOR REDUCED RATES IS BINDING.—Where a railroad company offered reduced rates on articles to be used for farming purposes, and a shipper falsely represented the purpose for which the goods were to be used, and thereupon received a bill of lading in which reduced rates were specified, and the false statemeni being discovered before the goods were delivered, full rates were collected. In an action by the shipper to recover the excess paid over the stipulated rates it is held that he cannot recover.—*Fry* v. *L.* & *N. A. Ry. Co.*—Filed Oct. 16, 1885.—Ind.

BROKERS—EXCEEDING THEIR AUTHORITY —LIABILITY.—A broker in New York City receives orders to buy certain goods to be shipped on a certain date. He buys the goods and orders them shipped without giving the seller notice of the limitation of time. The goods are refused by the consignee on the ground that they did not arrive in time. *Held* that the broker is liable for any damages sustained by the shipper.—*Simmons* v *Moses*—Filed Oct. 6, 1885—N.Y.

CONVEYANCE OF REAL ESTATE—ORAL CONTRACT—MORTGAGE IN EXCESS OF REAL DEBT—A BADGE OF FRAUD.—Where a contract for the sale and purchase of real estate is not in writing, and the seller permits the purchaser to improve the property, he may be compelled to perfect the conveyance in accordance with the oral contract. A mortgage given in excess of the actual debt is a badge of fraud and may estop the mortgagor from his right of redemption. A note and mortgage refering to each other must be construed together.—*Jewett* v. *Tucker.*—Filed June 25, 1885.—Mass.

CONTEMPT—POWER OF THE LEGISLATURE TO PUNISH FOR.—In any legislative proceeding either house has the power to punish for contempt in refusing to submit to an examination and to answer questions. An investigation set on foot for purely political pnrposes is not properly legislative proceedings. One thus brought before the house for examination has no constitutional or legal right to counsel. *Keeler* v. *McDonald.*—Filed Oct. 6, 1885.—N. Y.

CONDITIONAL CONTRACT—EXCHANGE OF LANDS.—MISTAKE. —Where a party contracted to Exhange certain land in Texas, upon approval of an agent sent there to examine the lands, and it subsequently

appeared that no such lands as described in the contract were found, because of wrong description in the contract, no recovery of the agent's expenses can be had unless fraud is shown, or unless it was agreed that he should be reimbursed for expenses.—*Day* v. *Mason.*—Filed Oct. 6, 1885.—N. Y.

CONTRACT—SALE AND DELIVERY OF BRICK—BREACH OF CONTRACT.—On a contract to beliver 400,000 brick promptly, a tender of a boat load was made and refused on the ground of defective quality and want of space. *Held* that his refusal to receive those tendered was a breach of contract.—*Canda* v. *Wick*—Filed Oct. 6, 1885.—N. Y.

CONNVEYANCE — CONSIDERATION, LOVE AND AFFCTION—RECONVEYANCE WITHOUT ANY FORMAL CONSIDERATION. — Where a parent conveys land to his childeren, love and affection being the only consideration, he orally reserving an easment in the same and, the children, grantees, subsequently by an instrument in writing, reconveys to the parent the easment which he orally reserved without any consideration except the former conveyance to them, such conveyance is not void for want of consideration, and will be upheld.—*Clapp* v. *Forster.*—Filed Sept. 26, 1885.—Ia.

COMMON CARRIERS — LIMITING THEIR LIABILITY FOR LOSS OF GOODS—BURDEN OF PROOF.—Where a shipper misrepresents the value of goods shipped for the purpose of getting reduced rates, he will be bound by his valuation. but the burden of proof is on the carrier to show that the shipper thus valued his goods.—*Rosenfield* v. *Peoria D. & E. Ry. Co.*—Filed Sept. 24, 1885.—Ind.

CRIMINAL LAW—SELF-DEFENSE—ACTUAL OR APPARENT DANGER.—INSTRUCTION.—In a trial for murder it is error for the court to instruct the jury that the defendant must show that he was in actual danger to justify self defense by killing. It is sufficient if he had reason to believe that his life was in danger. It is error to instruet the jury that if from all the circumstances and facts they believe that the defendant swore falsely, they shall wholely disregard his evidence. The essential element of wilfully and knowingly swearling falsely must be included to justifiy total disregard of his testimony.—*Pantou* v. *People*—Filed Sept. 21, 1885.—Ill.

CRIMINAL LAW—SELLING INTOXICATING LIQUORS—INTENT.—Where a party does not carry on the business of selling intoxicating liquors, and his clerk makes an incidental sale of liquor, the merchant is not liable for a nuisance. The intent is the gravamen of the act, and no conviction can be had where there was no intent to do the wrong. Going to trial without pleading to the indictment is no ground for reversal.—*State* v. *Hayes.*—Filed Sept. 25, 1885.—Ia.

CROSS-REMAINDER — VESTED INTEREST SUBJECT TO A FUTURE CONTINGENCY.—A testatrix left one third of her estate to her husband for life with remainder over to her step-children and the remainder over to another, in case the step-children died without children, the last remainder not to vest until the death of both the step-childeren without issue. *Held* that the interest of the step-children was a vested remainder and that upon the death of one of the step-children the father inherited an absolute fee.—*Estate of Allen, et al.*—Filed Oct. 5, 1885.—Pa.

CONSIGNEES—TRUST FUND—BANKRUPTCY OF CONSIGNEE.—Where goods are consigned on sale, and having been sold, the consignee deposits funds in bank in his own name adding the word "agent," for the purpose of remitting the procceds of goods sold, and does actually send his check to the consignor against the money so deposited, this acts as a transfer of the funds. When such check is presented the bank is bound to pay the same and cannot otherwise apply money on deposit. Even though the depositor consents to a different application of the funds it will not avail.—*Baker* v. *N. Y. Ex. Bank*—Filed Oct, 6, 1885.—N. Y.

DEED UNRECORDED—LAND CONVEYED A SECOND TIME—MORTGAGEE'S TITLE NOT OF RECORD.—A party having received a deed of certain lands, fails to have his deed recorded. He subsequently mortgages the same. The land is sold again and another deed executed by the owner of record. The latter deed is held valid as the mortgage made by the first grantee whose deed was not recorded was not notice to other purchasers. — *Traphagen* v. *Irvin.* — Filed Sept. 29, 1885.—Neb.

COMMON CARRIER—INJURY TO PASSENGER IN BOARDING A BOAT—RIGHT TO FOLLOW DIRECTION OF OFFICERS OF THE BOAT.—A party in getting on a steamboat where employes have neglected to put out a gangplank, is injuried whilst following the direction of employes of the boat. *Held* that the owner of the boat is liable for damages for injury sustained. A passenger is not chargeable with contributory negligence whilst following the directions of officers of the boat.—*Clintou* v. *Root.*—Filed Sept. 29, 1885.—Mich.

CHATTLE MORTGAGE—EXECUTED SUBSEQUENT TO THE PURCHASE.—Where a party purchases property and agrees to pay for the same at a future time, but subsequently, before maturity of the debt, he executes a chattle mortgage on the property to the party of whom he purchased, the lien of the mortgage takes effect as of the date of the purchase and not the date of the mortgage. —*Peters* v. *Parsons.*—Filed Sept. 29, 1885.—Neb.

COUNTY COMMISSIONERS — POWER TO DETERMINE WHAT ANIMALS MAY RUN AT LARGE.—The board of county commissioners has power to determine what animals may or may not run at large, and they can at any time change any order previously made in such matter.—*Welch* v. *Bowen.*—Filed Oct. 14, 1885.—Ind.

CORPORATION—MONEY PAID WITHOUT REQUEST.—RATIFICATION.—Where money has been paid for a corporation with the knowledge of its officers, but not upon their request, their acquiescence in such payment works a ratification and the corporation is liable for the amount so paid. In an action to recover money thus paid to laborers, the time book of the laborers and their receipts are competent evidence.—*Martin* v. *V. M. & M. Co.*—Filed Oct. 3, 1885.—Nev.

CORPORATION—NOT LIABLE FOR NOT PERFORMING AN OBLIGATION WHICH WAS IMPOSSIBLE—The charter of the susquehanna boom company made it the duty of the company to construct and maintain such booms as were necessary to secure and retain all the lumber received therein. Plaintiff's lumber having been floated into the boom, by reason of high water in the river some of the lumber floated away and was wholely lost to plaintiffs, for which an action is brought against the boom company. A trial was had to the court and judgment for defendants. On appeal this judgment is affirmed, on the ground that defendants could not prevent the escape of the logs, and were not guilty of negligence. The requirement of the charter could not be performed under the circumstances.—*Brown Susq. Boom Co.*—Filed Oct. 5, 1885.—Pa.

COMPLAINT—CERTIFYING BY JUSTICE OF THE PEACE ON APPEAL.—One being convicted before a justice of the peace of a misdemeanor, and an appeal being taken, it is the duty of the justice to certify the complaint in full to the appellate court. It is error to force the defendant to trial with only a copy of the complaint uncertified by the justice. The district court in such case may permit an amendment and allow a certified copy of the complaint to be filed. —*State* v. *Anderson.*—Filed Oct. 9, 1885.—Kans.

CONTRACT BETWEEN PARENT AND CHILD —WILL.—A father agrees with his son that he will bequeath to him his farm on condition that the son will support him during his life, and the father makes a will in accordance with this agreement. After ten years

has elapsed the son dies, and the father then bequeathes the same property to another son on like conditions as before. The administrator of the deceased son brings an action in *Assumpsit* against the administrator of the father, for sustenance during the period he had sustained and cared for his father. Judgment was had for plaintiff, and on appeal this judgment was reversed. *Held* that the contract between the father and son was not sufficiently established without witnesses who could testify clearly and distinctly to the terms of the contract—*Burgess* v. *Burgess*.—Filed Oct. 5, 1885.—Pa.

CHATTLE MORTGAGE—CHANGE OF POSSESSION—ATTACHING CREDITOR.—Where a chattle mortgage is executed in good faith for a valid consideration although the delivery or change of possession is not as complete and prompt as the statute requires, the mortgagee's title is good as against an attaching creditor.—*Lorton* v. *Fowler*.—Filed Sept. 29, '85.—Neb.

CONVEYANCE GRANTING RIGHT OF WAY—NOT A GRANT IN FEE—EASMENT ONLY.—Prior to May 6, 1853, there was no general law for the incorporation of railroads in force in Indiana and a deed granting to a railroad, the right of way over certain lands, to be held by the railroad company so long as used for the purpose for which it was granted, did not pass the title in fee, but only an easment, which became an incumbrance on the land. Proof of such a conveyance under a plea that an absulute title passed constitutes a variance which is fatal to recovery. —*Douglass* v. *Thomas*.—Filed Oct. 7, '85—Ind.

COUNTY COMMISSIONERS—CONTROL OF COUNTY PROPERTY—APPEAL FROM DECISION OF BOARD.—The board of county commissioners have exclusive control over the property of the county and may erect or change the location of any of the county instutions but must proceed strictly according to statute. When the board acts in a judicial capacity an appeal will lie, but when its action is ministerial their decision is final.—*Platter* v. *Board of Elkhart Co.*—Filed Oct. 7, 1885.—Ind.

CONTRACTOR ON PUBLIC WORKS—LIABILITY OF STATE FOR LOSS OF DEPOSIT WITH STATE TREASURER.—Where a contractor of work for the state deposited money with the state treasurer which was to be returned upon the completion of the work, and in the meantime it is lost though the insolvency of a bank in which treasurer deposited it he is liable for the amount. An appropriation of funds by act of the legislature to pay the claim is a recognition af such a claim and the statute of limitation will commence to run from the date of such appropriation.—*Corkings* v. *State*—Filed Oct. 6, 1885—N.Y.

DIARY NOT AN ACCOUNT BOOK—FORGERY AS A DEFENSE AGAINST A PROMISSORY NOTE. —A diary in which all the transactions of the day are noted, cannot be put in evidence as an account book. In an action on a promissory note where the defense of forgery is set up, it is for the court to determine whether the hand writing is shown to be genuine or not.—*Costello* v. *Crowell*.—Filed June 29, 1885.—Mass.

DEED—ACKNOWLEDGED BUT NOT DELIVERED — WITH EXPLANATORY LETTERS OFFERED AS A WILL.—A decedent made a deed of gift to his sister but did not deliver it. Before his death he wrote her a letter, telling her of the execution of the deed and assuring her that in case ot his death she was provided for. *Held* that the deed and letter taken together constituted a will which might be proved and constitute a valid devise.—*In Re Estate of S. Kerrett*.—Filed Oct. 9, 1885.—Cal.

DEED—DELIVERY TO ANOTHER THAN THE GRANTEE.—Where one executed a deed conveying land to another as part of a transaction which was abandoned before completion, and in taking a reconveyance of the first grantor procures a deed executed to his wife. The deed is delivered to him and not

to his wife who is the grantee in the deed, and she is not informed of the fact that the deed is made to her. *Held* that her heirs cannot inherit under the deed of which she had no knowledge and had not accepted.—*Watson* v. *Hillman.*—Filed Sept. 29, 1885.—Mich.

DEED—GRANTEE'S NAME WRONGFULLY INSERTED—DOES NOT PASS LEGAL TITLE.—A deed executed and acknowledged leaving out the name of a grantee, it is inserted without authority of the grantor. Even though the party whose name is thus inserted, be in possessiion of the land under contract of purchase with the grantor, this does not cure the defect of the wrongful insertion of his name in the deed.—*Aguello* v. *Bours*—Filed Sept· 21, 1885.—Cal.

DEED—NO CONSIDERATION EXPRESSED—PROMISSORY NOTE—INNOCENT HOLDER.—A deed executed and delivered in which no consideration is expressed is not invalidated thereby. A promissory note made and delivered, with the understanding between the parties that payment of the note would never be called for, is nevertheless valid in the hands of an innocent holder for value, who has obtained it before maturity.—*Good* v. *Moulton.*—Filed Sept. 28. 1885.—Cal.

DEDICATION OF STREETS—TOWN PLAT—DEFECTIVELY ACKNOWLEDGED.—The act of recording or filing for record, a plat of town lots, works a dedication and conveyance of the portion marked out for streets and alleys and title passes to the municipal corporation. A defective acknowledgment of the same will not void the dedication. The town or city is not bound to grade and improve the streets in order to retain the title.—*Shea* v. *City of Ottumwa.*—Filed Sept. 25, 1885.—Ia.

DESCENT—HEIRSHIP—PERSONAL AND REALTY DESCENDING BY DIFFERENT RULES.—In the settlement of the estate of a decedent where the statute provides that brothers and sisters shall take precedence over those of the half blood, in the distribution of the realty, but all shall share equally in the personalty, and the testator provides in his will for the conversion of his real property into money, it will be treated as personal property from the time of the testator's death.—*Keller* v *Harper*—Filed June 24, 1885.—Md.

DESCENT—TRUSTEE WITH POWER—EXERCISE OF HIS POWER.—Ordinarily the donee of a power, in executing that power, should refer to it in the instrument, but the power may be executed without such reference, if the intention to execute the power clearly appears. A general devise or bequest will not include the subject of the power.—*Patterson et al.* v. *Wilson et al.*—Filed June 24, 1885.—Md.

DIVORCE—HABITUAL DRUNKENNESS—WHAT IS HABITUAL DRUNKENNESS.—In the statute relating to divorce, making habitual drunkenness a ground for divorce, a man who becomes intoxicated whenever the opportunity offers may be deemed a habitual drunkard. It must appear however, that the practice of thus drinking to excess has become a fixed habit with him.—*Walton* v. *Walton*—Filed Oct. 9, 1885.—Kans.

DIVORCE—IF LEGALLY OBTAINED IN ANOTHER STATE HELD VALID HERE—ALIMONY.—A divorce legally granted in the state of Nebraska held valid in this State. Where subsequent to the decree of divorce the husband inherits property, the wife is not entitled to alimony on account of such inheritance. When decree was granted the relation of husband and wife ceased and no right to alimony could subsequently accrue. — *Van Orsdal* v. *Van Orsdal.* — Filed Sept. 25, 1885.—Ia.

EVIDENCE OF AN EXPERT—HYPOTHETICAL QUESTION—SURROUNDING CIRCUMSTANCES.—A hypothetical question based upon facts testified to, being stated to an expert, his opinion is admissible. Where it is sought to recover damages caused by the drippings of an adjoining honse, it is competent to show

the degree of dampness in other houses in the immediate vicinity, which were not affected by any such drippings.—*Lotz* v. *Scott.*—Filed Oct. 7, 1885.—Ind.

EQUITY—LEGAL REMEDY.—In an action by one or more of the citizens of a school district in behalf of the people of the district to restrain the collection of an illegal tax equity will take jurisdiction, although each citizen of the district has or may have his remedy at law. Money appropriated for *repairs* cannot be applied to building a new house.—*Carlton* v. *Newman.*—Filed Aug. 8, 1885.—Me.

EMPLOYER AND EMPLOYE—RETENTION OF MONEY BY EMPLOYE.—Plaintiff was employed by defendant on a salary for one year, and at the end of the term defendant refused to pay him his salary on the ground that he had retained moneys which he had received without authority to do so. *Held* that as there was no charge of criminal appropriation of the money to his own use, he was entitled to recover his salary, subject to any just set-off by defendant.—*Turner* v. *Konwenhoven.*—Filed Oct. 6, 1885.—N. Y.

FRAUDULENT TRANSFER—KNOWLEDGE OF FRAUD BY PURCHASER.—Where goods are sold with intent to defraud creditors, knowledge of his fraudulent intent by the purchaser, although he do not participate in the fraud, will render the sale void.—*Hough* v. *Dickinson.*—Filed Sept 29, 1885,—Mich.

FORECLOSURE OF MORTGAGE—PUBLICATION OF NOTICE.—Where the statute requires notice of foreclosure of a mortgage to be published in a newspaper *printed* in the county, it is not a compliance with the statute to show that such notice was published in a newspaper, which was *published* in the county.—*Braydon* v. *Hatch.*—Filed Aug. 6, 1885.—Me.

FRAUDULENT CONVEYANCE—BURDEN OF PROOF.—Where a judgment creditor attacks a conveyance made by the debtor to his wife, prior to the contracting of the debt, on the ground of fraud, the burden of proof is upon the plaintiff to establish the fraud alleged.—*Knight* v. *Kidder.*—Filed June 4, 1885. — Me.

PRINCIPAL AND AGENT—RATIFICATION OF WRONG OR UNAUTHORIZED ACT.—If an agent by fraudulent representations and inducements, consummates a contract for his principal, and the principal accepts and appropriates to himself the benefits of the contract, he becomes responsible for all the fraud practiced by the agent. Although the agent acted without authority he now by ratification becomes an agent *ab initio.* Representations by one familiar with the subject matter, to one not familiar, gives the latter a right to rely upon the statements made without investigation,—*Clark* v. *Ralls* —Filed Sept. 24, 1885.—Ia.

PRACTICE — EXCLUSION OF COMPETENT TESTIMONY—OBJECTION SUBSEQUENTY WITHDRAWN.—Where objection is made to testimony which is competent, and the objection is sustained, and subsequently the the objection is withdrawn, but the party refuses to avail himself of the withdrawal of the objection, the error of excluding it in the first place is cured.—*Campbell* v. *Hunt.*—Filed Oct. 6, 1885.—Ind.

PRINCIPAL AND AGENT—AUTHORITY—FRAUD.—Where an agent is authorized to act in a certain line the principal warrants against fraud in his actions, and if a railway clerk whose duty it is to issue bills of lading, fraudulently issue a bill or bills of lading without receiving the goods designated, the company is liable to an innocent holder of the bill.—*Brooke* v. *N. Y. L. E. & W. Ry. Co.*—Filed Oct, 5, 1885.—Pa.

FALSE REPRESENTATION BY AN INFANT—GOODS RESOLD TO AN INNOCENT PURCHASER FOR VALUE.—A minor who represents himself to be of full age, and thereby obtains

goods on credit is liable in a criminal action. If the minor who thus obtains goods resells them to an innocent purchaser for value, such purchaser takes title which cannot be assailed on account of the fraudulent representations on which the minor purchased them. But where the goods are thus sold to a third party and the original owner replevies them, the burden of proof rests on the latter purchaser to show the entire good faith of the transaction.—*Neff* v. *Landis*.—Filed Oct. 5, 1885.—Pa.

FRAUDULENT TRANSFER OF PERSONAL PROPERTY—A BENEFIT ACCRUING FROM THE USE OF PROPERTY A SUFFICIFNT CONSIDERATION.—Where property was transfered and an actual delivery made, of property to be used in establishing a ferry from which it was supposed benefits would accrue to the transferrer. *Held* that this is sufficient consideration to support the transfer as against creditors.—*Lewin* v. *Hopping*.—Filed Sept. 28, 1885.—Cal.

FRAUDULENT CONVEYANCE — INNOCENT PURCHASER FOR VALUE.—A debtor may dispose of his property, with intent to defraud his creditors and yet give the purchaser for value a good title, if he is a *bona fide* purchaser for value, and has no notice of the fraud. Where a chattle mortgage was fraudulently made, and whilst an action is pending to establish the fraud, a third party, not a party to the action, is not bound to take notice of the action pending.—*Zoeller* v. *Riley*.—Filed Oct. 6, 1885.—N. Y.

FIRE INSURANCE—SURRENDER OF POLICY AND PAYMENT OF SHORT RATES.—REASONABLE EXPENSES.—Where a policy of insurance provides that the insured may at any time surrender the policy and have it cancelled, by paying "short rates" established by the company, he is not obliged to pay any premium notes which may have been given before he can demand the cancellation of the policy, but he is only required to pay in cash an amount sufficient to cover the short rates for the time the policy has run. Reasonable expenses incurred in the issue of the policy is a question for the jury.—*Burlington Ins. Co.* v *McLeod*.—Filed Oct. 9, '85—Kans.

FALSE REPRESENTATION—EXCHANGE OF PROPERTY—NEGLIGENCE.—Where in an exchange of property including lands lying in a distant place, the party falsely representing the value of the lands and improvements thereon, may be called upon to rescind or respond in damages in an action of deceit and the grantee held justifyable in relying upon the statements concerning the land without going to examine them.—*Ladd* v. *Piggott*.—Filed Sept. 21, 1885.—Ill.

FALSE PRETENSES—INDICTMENT FOR—USING FIRM NAME.—In an indictment for false representations made to a firm it is not necessary to set out the individual names of the members of the firm. It is sufficiently deffinite to allege that they "relied on such false representations."—*State* v. *Williams*—Filed Oct. 9, 1885.—Ind.

FRAUD—PRESUMPTIONS OF—BURDEN OF PROOF.—The general rule is that the party alleging fraud must prove it, but where it appears that one party has the advantage of the other by superior knowledge of the subject matter of the contract, or in any way has an overpowering influence over the other, the burden of proof may be shifted.—*Crawford* v. *Hoeft*.—Filed Sept. 29, 2885.—Mich.

FRANCHISE—USURPATION OF—BURDEN OF PROOF.—Where proceedings *in quo warranto* are commenced for usurpation of a corporate franchise, the burden of proof is on the defendant to show that it was legally formed, and the answer should set forth the facts from which its legal existence will appear. The fact that the relator, on whose account the proceedings were commenced, was an officer of the corporation, at the time does not bar the maintance of the action.—*People* v. *Lowden*.—Filed Sept. 28, 1885.—Cal.

FRAUDULENT TRANSFER—GIFT BY HUS-

BAND TO WIFE BEFORE INSOLVENCY.—Where a husband transfers property to his wife whilst he is solvent or before any contemplation of insolvency, such transfer or conveyance will be upheld as against the husbands creditors. The question of fraud is one of fact to be determined upon all the facts and circumstances bearing upon the good faith of the transaction. Dealings between husband and wife, or between those near of kin, are not necessarily a badge of fraud, and if the good faith of the transaction is attacked fraud must be proved.—*State* v. *Wallace et al.*—Filed Sept. 26, 1885.—Ia.

FIRE INSURANCE—DECEIT BY AGENT AND INSERTING FALSE STATEMENTS IN APPLICATION—LIABILITY OF COMPANY.—Where it appears that the assured made true statements, but the agent so wrote his statements in the application that as stated they were false, the company cannot defend against the policy for a breach of the conditions on the ground of false statements, in the application. It will not avail the company although the policy contain the clause that the agent taking the application shall be considered the agent of the assured and not the agent of the company.—*Sullivan* v. *Phœnix Ins. Co.*—Filed Oct. 9, 1885.—Kan.

FERRIES—POWER OF THE LEGISLATURE TO GRANT OR LIMIT A FRANCHISE.—The legislative act granting the right to operate a ferry across a stream of water at a given place, does not imply an exclusive grant. It may subsequently grant a similar franchise to another party to operate another ferry at or near the same place.—*Power* v. *Athens*—Filed Oct. 6, 1885.—N. Y.

GARNISHMENT—DEBTOR AND CREDITOR LIVING IN ONE STATE AND THE GARNISHEE IN ANOTHER.—A creditor and debtor living in Missouri, and a creditor of the debtor living in Kansas, the latter cannot be garnisheed for a debt which is payable in Missouri, and which by the laws of the latter state is exempt under laws of Missouri.—*M. P. Ry. Co.* v. *Maltby.*—Filed Oct. 9, 1885—Kans.

GOODS FRAUDULENTLY OBTAINED—*Bona fide* PURCHASER—NOTICE.—Goods fraudulently obtained by one who is insolvent and subsequently sold to a third party will pass a good title, although the purchaser knows at the time the purchase is made that the goods have not been paid for by the party of whom he purchases. Such knowledge is not notice of his fraudulently obtaining said goods.—*Hanchet* v. *Kimbark.*—Filed Sept. 21, 1885.—Ill.

GARNISHMENT—JUDGMENT AGAINST GARNISHEE WITHOUT SERVICE ON THE DEBTOR.—A Judgment rendered against a garnishee, where the debtor has not been served and has had no notice, is void for want of jurisdiction. The statute provides that "no judgment shall be entered in any garnishment proceeding condemning the property or debt in the hands of the garnishee until the principal defendant shall have had ten days notice of such proceedings."—*Wise* v. *Rothschild.*—Filed Oct. 6, 1885.—Ia.

GARNISHMENT—CHECK DRAWN BEFORE SERVICE OF ATTACHMENT—CHECK MADE AND DELIVERED WORKS AN ASSIGNMENT.—A check drawn on a bank by a debtor before service of garnishee process, but not presented for payment until after service, should be paid by the bank. It operates as an assignment of the amount it is drawn for. If the check is drawn in another state on a bank in Illinois, the law of Illinois governs. —*Nat. Bank of America* v. *Ind Bkg. Co.*—Filed Sept. 21, 1885.—Ill.

HUSBAND AND WIFE—MORTGAGE OF HER OWN OR HER HUSBANDS LANDS.—Where a wife joins with her husband in executing a mortgage on the husbands lands, upon foreclosure of the mortgage she is entitled to have the husbands two thirds interest sold first, and if that does not satisfy the lien, then her interest may be sold. The wife cannot make a valid mortgage on her

own separate property for the purpose of paying her husbands debt.—*Cupp* v *Campbell* Filed Oct. 8, 1885.—Ind.

HOMESTEAD—MORTGAGE—JUNIOR MORTGAGEE TAKING AN ASSIGNMENT OF A SENIOR MORTGAGE.—Where land is mortgaged in which a homestead is included, and another and junior mortgage is placed upon that part of the land not including the homestead, if the junior mortgagee pays the senior mortgage and takes an assignment of the same, he does not thereby aquire a lien on that part which constitutes the homestead. The mortgage as applied to the homestead is satisfied and discharged.—*Grant* v *Parsons* —Filed Sept. 25, 1885.—Ia.

HOMESTEAD—RIGHTS OF THE WIDOW—WHEN HER INTEREST BECOMES A VESTED RIGHT.—The interest of the wife of a decedent, in the homestead, is only an incohate right, until her portion or interest is set off to her, and then it becomes a vested interest which she may sell and transfer.—*Lake* v. *Page.*—Filed July 31, 1885.—N. H.

INSURANCE — ELECTION TO REBUILD—SEVERAL LIABILITY.—Where property was insured in a number of different companies, and after notice of loss the companies jointly declare their intention to rebuild, and subsequently, but before the work is commenced, a compromise is effected between the assured and all the companies save one and settlement had on a money basis. *Held* that the company not agreeing to the compromise is liable prorata for a money consideration and the amount for which it is liable is determined by the proportion of the amount insured by the policy, to the total loss, and the amount for which other companies settled cannot be taken as a guide in the measure of liability.—*Good* v. *Buckeye M. F. Ins. Co.*—Filed Oct. 6, 1885.—O.

INSTRUCTIONS—NEGLIGENCE COMBINED WITH THE ACT OF GOD.—CONTRIBUTORY NEGLIGENCE.—Where a railway company constructed bridges and culverts negligently and imperfectly which are washed away by act of God, and damage accrues to land and crops on adjacent land, the owner may recover damages therefor, although he were in some degree at fault himself.—*R. V. Ry. Co.* v. *Fink.*—Filed Sept. 29, 1885.—Neb.

IMPRISONEMENT FOR DEBT—BASTARDY PROCEEDINGS—JUDGMENT FOR MAINTAINANCE NOT A DEBT.—The constitutional provision that "no person shall be imprisoned for debt, except in case of fraud," has reference to liabilities on contract. A charge of maintainance adjudged against the father of an illegitimate child is not a debt in the sense in which that term is used forbidding imprisonment.—*In Re Petition of Wheeler*—Filed Oct. 9, 1885.—Kans.

INSOLVENCY—PREFERENCE—FEE OF ONE WHO DRAWS THE DEED.—A deed of trust by a failing debtor, in which there is a reservation of fee for drawing the deed is void. It was provided in the deed that the trustee should disburse the funds placed in his hands as the law directed. The fee for drawing the deed becomes a debt of the insolvent, and as such could not be preferred. —*Wolsheimer* v. *Revinus.*—Filed July 22, 1885.—Md.

INSURANCE — FORFEITURE — NOTICE OF DUES—WITNESS TESTIFYING TWICE TO SAME FACT.—One of the conditions in a policy of insurance provided for the payment of $3 annually on September 1st, and another clause provided that if such dues were not paid within 30 days after notice had been given the policy should be forfeited thereby. *Held* that where no notice had been given no forfeiture could be claimed. Allowing a witness to be called a second time to testify to the same fact or facts is not such an error as will form ground for reversal when it can work no prejudice to the adverse party.—*C. M. Ben. Assn.* v. *Spies.*—Filed Sept. 25, 1885.—Ill.

IMPOUNDING STOCK—LIEN FOR REMUNERATION.—Where a party takes up stock which

is trespassing upon cultivated lands he must agree to arbitration as to the amount he is entitled to charge the owner, and refusing to do so he looses his lien upon the stock and the owner may recover possession by replevin.—*Dierkes* v. *Weilage.*—Filed Oct. 6, 1885.—Neb.

ILLEGAL ARREST—AN ESCAPING DEBTOR ARRESTED WITHOUT SUIT BEING COMMENCED OR WITHOUT ISSUE OF WARRANT—DAMAGES.—A debtor in removing his family to another state is arrested while yet in the state, after he had proceded 300 miles on his journey, no suit having been commenced against him and no warrant issued, but simply upon a telegram sent by the creditor, to the sheriff of the county through which he was travelling. In an action for damages for false imprisonment it is *Held* that the arrest and imprisonment was illegal. Damages assessed should at least cover the actual damages in expence and loss of time.—*Zimmerman* v. *Knox.*—Filed Oct. 9, 1885.—Kans.

INDEMINTY BOND—LIABILITY OF BONDSMEN—DEFALCATION OCCURRING AFTER THE EXPIRATION OF TERM.—The bond of a corporate officer expires with his term of office and bondsmen are not liable for a defalcation occuring after the term has expired for which the bond was given. Under the by-laws of the corporation the directors had power at any time to end the term and dismiss the officer. Where the term had expired and he held over awaiting the appointment of his successor his bondsmen were no longer responsible.—*F. E. Co.* v. *Allen.*—Filed Sept. 26, 1885.—Cal.

JURISDICTION—POWER OF SUPREME COURT TO MODIFY PUNISHMENT IMPOSED.—Where the board of fire commissioners of New York City imposed certain punishment on a police officer for neglect of duty, the supreme court cannot review the case on a writ of *certiorari* where there is no question raised as to the jurisdiction of the board in the proceedings had before it.—*Kent* v. *Bd. of Commissioners*—Filed Oct. 6, 1885.—N. Y.

LIFE INSURANCE—DEFAULT IN PAYMENT OF PREMIUM—WAIVER OF DEFAULT.—In a life insurance policy where by its conditions the policy is forfeited upon default in payment of premiums due, and the assured being in default, the company write him, that if he will remit immediately they will waive the forfeiture and credit him with the money paid, if he remit 23 days after receipt of the company's letter, it is not a compliance with their offer, and the company is not bound to receive it.—*Servoss* v. *Western Mutual Aid Soceity*—Filed Oct. 6, 1885.—Iowa.

MUNICIPAL CORPORATIONS—SALE OF BONDS—COMMISSION ALLOWED—VALIDITY OF BONDS ALREADY SOLD BEFORE JUDICAL DECISION DECLAREING CONTRACT VOID.—This is an exceedingly lengtly decision in which many points are decided touching upon the authority of a municipality to issue bonds, and upon the method of selling the same. The city being authorized to issue bonds for a certain purpose and to dispose of the same at par value with some discretion as to the commission it shall pay for the sale of the bonds, enters into a contract with a syndicate. The purport of the contract is that the bonds are sold to the syndicate with an allowance of a commission on all bonds sold. The contract is declared void, but all bonds already sold and held by third parties are held valid.—*Whelen's, McCandless* and *Scully's Appeals.*—Filed Oct. 5, 1885.—Pa.

MORTGAGE—DISCHARGED BY MISTAKE—SUBSEQUENT PURCHASER.—A mortgage having been dircharged by mistake, and the land sold and conveyed on the title of record, by the owner to his son, the purchaser cannot be charged with notice of the mistake in the discharge of the mortgage by reason of his relation to the seller. In such case, in an action by the mortgagee of the

mortgage wrongfully discharged, to have the lien of the mortgage reinstated, if there is any of the purchase money unpaid by the son to the father, equity will decree judgment in the nature of a garnishee to the extent of the amount actually due under the mortgage so discharged.—*Sheldon* v. *Holmes*—Filed Sept. 29, 2885.—Mich.

MUNICIPAL CORPORATION — DEFECTIVE SIDEWALK—EVIDENCE.—A woman being injured by reason of defective sidewalk, facts obtained by a physician in attendance upon her, are not admissible in evidence. Being necessary that he should learn those facts before he could prescribe for her, they are privileged communications. Plaintiff may show how much she earned by her labor each day before the injury, for the purpose of showing thereby her bodily condition.—*Dalton* v. *Albion*—Filed Sept. 20, 1885.—Mich.

MUNICIPAL CORPORATION — LIEN FOR PUBLIC IMPROVMENTS.—Where an ordinance is passed ordering certain improvments to be made, and if not made by individual owners of property, the corporation will make the improvements and assess the property therefor, the lien for such improvements does not attach until the work of improvements is actually commenced, and land conveyed after the passage of the ordinance and before the work is commenced, passes free from the lien of the special assessment.—*Norton* v. *South Easton.*—Filed Oct. 6, 1885.—Pa.

MOTION FOR STAY OF EXECUTION—APPEAL FROM ORDER DENYING THE MOTION.—Where after judgment, a motion is made for a stay of execution and denied, an appeal will not lie from the order denying the motion where the judgment in the case has not been appealed.—*Carit* v. *Charles.*—Filed Oct. 3, 1885.—Cal.

MALICIOUS PROSECUTION—DEFENSE OF ONE'S POSSESSION—WHEN AN ACTION WILL LIE—A person in lawful possession of property may defend his possession against an unlawful invasion by force, but he must use only so much force as is necessary. A person having been arrested for making such defence will be discharged for want of probable cause for the action, and if the arrest is made for the purpose of injuring the person arrested, it will be sufficient proof of malice in an action for false arrest.—*Casebeer* v. *Rice.*—Filed Sept. 29, 1885.—Neb.

MARINE INSURANCE—CONTRACT TO INSURE—DEFAULT.—Where a preliminary contract is entered into for insurance, whereby an insurer agrees to insure a certain risk within a given time it may be enforced. Where the party seeking insurance becomes insolvent before the execution of the contract his assignee can take his place, but the insurer has a right to demand payment or a valid note for the premium, or may declare the contract off.—*Hubbel* v. *P. M. Ins. Co.* Filed Oct. 6, 1885.—N. Y.

MUNICIPAL CORPORATION — ORDINANCE IN PART FOR SPECIAL ASSESSMENT AND IN PART FOR TAX.—A City ordinance imposing a tax, and also providing for a special assessment for street improvements, which is void in so far as it provides for taxation, is not therefore void as to the special assessments for which it provides.—*Jacksonville Ry. Co.* v. *Jacksonville.*—Filed Sept. 23, 1885.—Ill.

MUNICIPAL CORPORATION—OBSTRUCTION IN STREET—CONTRIBUTORY NEGLIGENCE.—Where there is an accumulation of cobblestons in the street, the owner, whose servant drives a horse recklessly over these stones in the day time, cannot recover damages of the city for injuries to the horse. The burden of proof in such an action is on the plaintiff to show negligence on the part of the city.—*McCool* v. *Grand Rapids.*—Filed Sept. 29, 1885.—Mich.

MORTGAGOR IN POSSESSION—NON PAYMENT OF TAXES—PURCHASE BY MORTGAGOR AT TAX SALE.—One who is the owner of real estate and has mortgaged the same,

remaining in possession, cannot allow his land to be sold for taxes, and he buy it in at the sale and thereby defeat the claim of the mortgagee or the lien of the mortgage.—*Fells* v. *Barbour*—Filed Sept. 29, '85—Mich.

MUNICIPAL CORPORATION—RIGHT TO EMPLOY AN ATTORNEY TO DEFEND A TOWN OFFICER.—In an action against a town marshall for false arrest and imprisonment, the board of trustees have a right to employ an attorney to defend the action, and the town is liable for the attorneys fees.—*Cullen* v. *Town of Carthage*—Filed Oct. 8, 1885.—Ind.

NEGLIGENCE—LIABILITY OF CITY FOR DEFECTIVE SIDEWALK—DEFENSE.—The passage of an ordinance by the city council directing the police to report any defect in crosswalks is no defense to an action for injury received. The question as to the extent of the imperfect condition of the walk is a question for the jury.—*Goodfellow* v. *City of New York.*—Filed Oct. 6, 1885.—N. Y.

NEGLIGENCE — RAILROAD TRAIN OBSTRUCTING STREET—PERSONAL INJURY.—Where a freight train was allowed to stand at a crossing of a highway, obstructing the street for a longer time than allowed by statute, and a passenger train passing frightend a team which was standing near by, causing the team to run away injuring the owner. In an action for damages for injury sustained, it is *held* that the passenger train being prudently and properly managed, the company is not liable for the injury, as the unlawful detention of the fright train was not the proximate cause of the damage or injury. —*Sellick* v. *L. S.* & *M. S. R. Co.*—Filed Sept. 29, 1885.—Mich.

NEGLIGENCE—LIABILITY OF TOWNSHIP FOR INJURY FROM DEFECTIVE BRIDGE—Where a bridge is out of repair, and death is caused thereby, the personal representations of the deceased, may maintain an action against the township for damages. Where the death was caused by a team being frightend and running away, the question whether the fright of the team was caused by the broken bridge or not, was properly a question for the jury.—*Wheeler* v. *Hatheway.*—Filed Sept. 29, 1885.—Mich.

NAVIGABLE STREAM—ABUTTING LAND OWNERS—CONSTRUCTION OF A WHARF.—The owner of land bordering on navigable waters has a right of free access thereto, and a municipality has no right to build a wharf and thus obstruct the approach to the water without compensating the owner of the abutting lands. Such action may be restrained by injunction.—*Shirley* v. *Bishop*—Filed Sept. 28, 1885.—Cal.

NEGLIGENCE—FIRE CAUSED BY SPARKS FROM LOCOMOTIVE—EXTENDING TO ADJACENT LAND.—Where a fire has been started in one locality by sparks from a locomotive and extends to an adjoining field, the question whether the fire in the latter field is the direct and natural result of the negligence which caused the first fire, is a question for the jury. If a locomotive, from which sparks have been emitted causing the fire, is so constructed that it does not retain its sparks, negligence will be presumed.—*Butcher* v. *V. V. Ry. Co.*—Filed Sept. 26, 1885.—Cal.

NOTE AND MORTGAGE—ASSIGNMENT OF NOTE.—Where a promissory note is secured by a mortgage the transfer and assignment of the note carries with it the mortgage security. Title to a promissory note, in the plaintiff must be shown by alleging in the complaint that it was assigned to him or by setting out the indorsement.—*Thompson* v. *M. B.* & *A. Asson*—Filed Oct. 15, 1885—Ind.

PRACTICE—BY MOTION FOR VERDICT ALL THAT HAS BEEN PROVED IS ADMITTED.—The plaintiff having presented his witnesses and rested his case, if the defendant moves that the court direct a verdict in his favor, it is equivalent to admitting all that has been proven. It is common practice in the *Nisi prius* courts to permit parties to intro-

duce material evidence at any time before verdict, which has been omitted by mistake or inadvertence, and this practice has always been approved by this court.—*Meadows* v. *Hawkeye Ins. Co.*—Filed Sept. 26, '85.—Ia.

PRACTICE — EXCEPTIONS—RATIFICATION OF AN UNAUTHORIZED TRANSACTION—A party excepting to "each and every charge" given by the court may present his objections to any one of the charges. Where an agent has acted without authority, the principal will become liable for his acts by appropriating to himself the benefits thereof, or by failure to repudiate the act within a reasonable time.—*Eikenberry* v. *Edwards.*—Filed Sept. 24, 1885.—Ia.

PRACTICE — QUESTIONS OUTSIDE THE PLEADINGS.—Where the court directed the jury to determine a question of fraud when no such question was raised by the pleadings, it is *held* to be error. When there is a failure to set up certain facts in the pleaddings on which recovery might be had, the party cannot depart from the pleadings and set up which might have beenproved, but were not pleaded.—*Freese* v. *Co-Operative Coal Co.*—Filed Sept. 25, 1885.—Ia.

PRACTICE—INTERVAL BETWEEN RETURN-DAY OF SUMMONS AND ISSUE OF ALIAS—STATUTE OF LIMITATIONS.—Where an interval occurs between the return-day of summons and the issue of an alias it breaks the continuity of the suit so that the statute of limitation may be pleaded.—*Johnson* v. *Mead*—Filed Sept. 29, 1885.—Mich.

PRACTICE—PAYMENT OF COUNTY SURVEYOR—ORDER OF COURT FOR PAYMENT OF WRONG FUNDS—REMEDY.—Where the court having jurisdiction of the subject matter, orders the county surveyor to be paid for work on a ditch, from funds raised by assessments for the ditch when he should be paid out of funds in the county treasury, mandamus will not lie against the county auditor to compel the issue of a warrant for the money. The remedy is a complaint for review.—*Morrison* v. *Morris, Auditor.*—Filed Oct. 6, 1885.—Ind.

PRACTICE—VARIENCE BETWEEN DECLARATION AND EVIDENCE — EXCEPTIONS. — Where there is a variance between material allegations in the declaration and the testimony, objection should be made, and a ruling of the court had, otherwise it cannot be made the foundation of a writ of error. Allowing it to pass without objection, instructions of the court calling attention to it, cannot be reviewed by appellate court.—*Barton* v. *Gray*—Filed Sept. 29, 1885.—Mich.

PRACTICE—BILL FOR REVIEW—REQUIREMENTS OF BILL.—In a bill for review the whole record is not required, only such portion as is necessary to set out the question to be reviewed. A demurrer reaches only such defects as appear on the face of the pleadings.—*Funk* v *Davis*—Filed Oct. 16, 1885—Ind.

PRACTICE—VERIFICATION OF INTERPLEA.—Where an interplea has been filed without being verified, and an answer has been filed to the same, and subsequently upon the trial, objection is made to the interplea for want of verification, it is competent for the court to allow it to be verified instanter.—*Hargrove* v. *Wolfe.*—Filed Oct. 9, 1885.—Kans.

PARTITION — DEMURRER — REDUNDANT IRRELEVANT MATTER IN PETITION.—In an action for partition where the petition contains irrelevant and immaterial allegations, and the trial court denies a motion to strike such matter out or allow an amendement, and an appeal is taken on these grounds the supreme court will not reverse for this reason.—*Sample* v. *Sample.*—Filed Oct. 9, 1885.—Kans.

PARTNERSHIP—PURCHASE OF THE PROFITS OF A PARTNER—LIABILITY OF A RETIRING MEMBER.—A party purchasing the profits of one of the members of a firm does not thereby become liable for firm debts.

When a partnership is formed between an individual and a firm, each member of the firm sustains the relation of a individual member of the latter firm.—*Meyer* v. *Konn.* —Filed Sept. 23, 1885.—Ill.

PRACTICE—REVIVOR OF ACTIONS—LIMITATION.—A motion to revive an action which has become dormant must be made within one year. Judgment which have become dormant may be revived by motion, but the same limitation of one year does not apply as in the revival of an action.—*Hunter* v. *Leahy.*—Filed Sept. 15, 1885.—Neb.

PRACTICE—EXCEPTION MUST BE MADE AND RULING OF TRIAL COURT HAD.—An answer which has not been questioned on the trial, cannot be attacked on appeal. In order to present a question for the supreme court, a ruling must be had in trial court and exception saved.—*Evansville* v. *Martin* —Filed Oct. 9, 1885.—Ind.

PROBATE OF WILL—MANDAMUS — DISCRETION OF PROBATE COURT.—A will dated 1881 was filed for probate, and probate being denied, an appeal is taken. Subsequently another will purporting to be executed by the testator bearing a prior date was filed for probate. This was also denied on the ground that the appeal in the former application was still pending. Thereupon a petition for mandamus was filed to compel the probate court to proceed to consider the probate of will last filed. *Held* that it was within the discretionary power of the probate court to receive the will last filed or not, and the order in the case would not be interfered with.—*People* v. *Kinckerbocker* Filed Sept. 23, 1885.—Ill.

PROMISSORY NOTES—RELEASE OF INDORSERS—GUARANTY.—Where a promissory note is guaranteed prior to maturity and accepted, there is an implied release of the indorsers. The fact that an indorser has knowledge of non payment is not such notice as will continue his liability.—*1st Nat. Bank* v. *Zahm*—Filed Oct. 5, 1885.—Pa.

PUBLIC OFFICERS—LIABILITY FOR AND APPOINTMENT OF AN UNSKILFUL AGENT.—The relation of principal and agent does not exist between a public officer and appointee and thh rule *respondect superior* does not apply. The county is not liable for injury cause by an unskilful physician appointed by the county commissioners.—*Somers* v. *Bd. of Com'rs.*—Filed Oct. 14, 1885.—Ind.

PROMISSORY NOTE—BILL OF PARTICULARS —In an action on a promissory note, in a justice's court, where the justice of the peace copies the note in his docket and issues a summons thereon, a bill of particulars is not required to be filed—*Phœnix Ins. Co.* v. *Lemke*—Filed Oct. 6, 1885.—Neb.

PARTNERSHIP—CLOSING UP THE BUSINESS —CONTRACT AS BETWEEN THE PARTNERS. —Where in the settlement and closing of a partnership business, one partner takes notes of a firm debtor and gives his own note to his partner, in adjusting a division of the property with the understanding that if the notes of the firm debtor, which he takes, are not paid in that event he shall not be called upon to pay his note. Such contract will be sustained, and he will be required to pay only pro-rata as the firm dehtor shall make payment.—*Goodenow* v. *Parkidson.*—Filed Oct. 7, 1885.—Ia.

PRACTICE—EJECTMENT—WAIVING RIGHT OF APPEAL.—Plaintiff commenced an action in ejectment, and was defeated in the action. He then served notice and commenced a new suit for same purpose, and pending the second suit he prosecutes an appeal of the first suit. *Held* that by commencing the second sult he waived his right of appeal in the first, appeal dismissed.—*Liebuck* v. *Stahle.*—Filed Sept. 24, 1885.—Ia.

PRACTICE—ADMITTING IMPROPER EVIDENCE—BILL TO QUIET TITLE.—A decree in chancery will not be reversed because of the admission of improper evidence. The presumption is that the judge considered only the legal evidence. A bill to quiet title cannot be maintained when the legal title is in defendant.—*Sawyer* v. *Campell.*—Filed Sept. 21, 1885.—Ill.

PRACTICE — PECUNIARY INABILITY TO ABATE A NUISANCE.—In an action on an indictment for a nuisance it is not valid defense to set up the fact that the defendant was pecuniarily unable to abate the nuisance.—*B. & Y. T. R. Co.* v. *State.*—Filed June 24, 1885.—Md.

PURCHASER AT JUDICIAL SALE—SUBSEQUENT VACATION OF DECREE OF SALE—PURCHASER'S TITLE GOOD.—Where land is sold at judicial sale and subsequently the decree of sale is set aside for want of sufficient service, the puachaser's title will be sustained. The title being obtained while the decree was in force is good.—*Watson* v. *Ulbrich*—Filed Oct. 6, 1885.—Neb.

PROMISSORY NOTE—MATERIAL ALLTERATION—INTENTION—COMPROMISE OF FRAULENT CLAIM.—Adding the name of an attesting witness is not a material alteration in a note unless it has the effect to vary the liability of the parties. The intention of the parties making the alteration is of no effect. A note of which the consideration is the compromise of a fraudulent claim is subject to the defence of fraud, unless it has passed into innocent hands for value before due.—*Fuller* v. *Green*—Filed Oct. 13, 1885.—Wis.

PROMISSORY NOTE—DEPOSIT FOR PAYMENT—LOSS BEFORE PRESENTATION.—A promissory note is made payable at a certain town, but not at any particular place or office in the town. Before maturity the maker deposits money with a party in the town for the payment of the note. Before the note is presented for payment the money is stolen. *Held* that the loss is upon the depositor or maker and not on the holder of the note. Had the note been made payable at a bank, and the money deposited for payment at the time the note became due, the holder would have been the loser.—*1st Nat. Bank* v. *Free*—Filed Sept. 24, 1885.—Ia.

PERSONAL INJURIES—EMPLOYE OF A CONTRACTOR—LIABILITY OF THE OWNER.—Where a carpenter was employed to erect a building, and one of his employes was injured in the use of defective appliance furnished by the carpenter, the owner of the building is not liable for the injury.—*Hoppin* v. *Woreester.*—Filed Oct. 25, 1885.—Mass.

PROCURING THE ADOPTION OF WARD BY GUARDIAN—TRANSFER OF REAL ESTATE.—A guardian may procure the adoption of his ward by a proper person, and to that end may transfer the property of the ward. When such transfer is made in good faith, the guardian cannot recover back the property.—*Chribb* v. *Bradley.*—Filed Oct. 28, 1885.—Mich.

PRACTICE—WAIVER OF DEFECT IN COMPLAINT—PUBLIC AND PRIVATE CROSSING OF A RAILWAY TRACK.—A defective complaint which might have been taken advantage of on demurrer, will be held good after verdict. Where a railroad company permits a party to construct a private crossing of the track for his own benefit, the company is not liable for injury to stock which are permitted to come npon the track.—*L. & N. A. & C. Ry.* v. *Goodbar.*—Filed Sept. 25, 1885.—Ind.

PRACTICE—AFFIDAVIT FOR CONTINUANCE—MOTION FOR A NEW TRIAL.—An affidavit by an attorney in support of a motion for a continuance upon his belief, that his client's absence is caused by sickness in his family, is not sufficient. The affidavit must show deffinitely the cause of the absence. After trial, and npon motion for a new trial, an affidavit showing the cause of the absence of a party on the trial may be used, but it

will not affect the ruling upon an insufficient affidavit offered before trial.—*McBride* v. *Stradley*.—Filed Oct. 6, 1885.—Ind.

PROMISSORY NOTE—INDORSEMENT IN A COMMERCIAL SENSE—DEFENSE IN HANDS OF THIRD PARTY.—A prommissory note secured by a mortgage was obtained by duress, by threats of arrest and criminal prosecution. The note was transfered by indorsement in the following words: "I James C. Rodgers, do hereby assign the within note to Charles B. Hatch, of Osage County, Kansas. Said assignment is made without recourse on me, either in law or equity."

J. C. RODGERS.

In an action by the maker of the note to declare the note and mortgage void because of duress in its inception, it is *held* that the indorsement was not an indorsement in a "commercial sense" such as to cut off an equitable defense to the note in the hands of a third party for value.—*Hatch* v. *Barrett*.—Filed Oct. 9, 1885.—Kans.

PROMISSORY NOTE—AGREEMENT TO FORBEAR—ESTOPPED OF DEFENSE.—If the holder of a note agrees with the maker to forbear, and wait untill he can collect some money, without receiving any consideration therefor, the maker is not thereby estopped from setting up subsequently any defense to the note wich existed at that time.—*Henry* v. *Gilliland*.—Filed Oct. 6, 1885.—Ind.

PROBATE DECREE—ADMINISTRATOR NOT NECESSARILY DISCHARGED UPON FINAL SETTLEMENT.—Pending an appeal from the disallowance of a claim, the decedent's estate is settled and the administrator discharged. The claim subsequently being adjudged just it is ordered that it be placed on file in the list of creditors, but cannot share in the proceeds of the estate unless new assets be discovered since the rendering of the decree. —*Clough* v. *Clark*—Filed June Term 1885. —N. H.

PRACTICE—BANKRUPTCY—JURISDICTION OF STATE COURTS.—Defendant filed his petition in bankruptcy in February 1868. In December 1875 he filed his petition for discharge, but done nothing farther towards obtaining his discharge. In 1882 an action was commenced against the bankrupt to which he pleaded the pendency of bankruptcy proceedings. Judgment was had for plaintiff. A motion to vacate the judgment was made in November 1883, on the ground of want of jurisdiction of the court which rendered the judgment. This motion is denied. *Held* that an adjudication in bankruptcy does not oust the state court of jurisdiction. —*Bracket* v. *Dayton*—Filed Nov. 4, 1885.—Minn.

PRESENTATION OF CLAIM AGAINST ESTATE OF DECEDENT—TIME ALLOWED.—Claims against the estate of a decedent may be presented at any time within two years from the time when claims were allowed to be filed, or within one year after the claim has accrued and before the settlement of the estate has been closed.—*Mann* v. *Everts*.— —Filed Nov. 3, 1885.—Wis.

PRACTICE—CONFESSION OF PART OF CLAIM—JUDGMENT FOR AMOUNT CONFESSED. —If defendant in his answer expressly confesses a certain amount due the plaintiff, judgment may be given for the amount so confessed. A plaintiff seeking to recover damages for the non-delivery of goods as per contract, must set up the particular time when the goods were to be delivered, and also the fact that defendant knew when they were to be delivered.—*Buffalo B. W. Co.* v. *Philips*—Filed Nov. 3, 1885.—Mich.

PRACTICE—LIABILITY OF CLERK—STATUTORY FEE.—A clerk who fails or neglects to collect the statutory fee required to be paid upon the filing of original papers in an action is liable on his official bond for the same. Long continued practice in violation of the requirement of the statute is no excuse.— *Klantz* v. *Werner*—Filed Nov. 3, 1885.—Wis.

QUALITY OF GOODS TO BE DELIVERED UNDER A CONTRACT—WHO SHALL BE JUDGE

OF THE QUALITY.—Where a party contracts for a certain quantity of lumber of a particular quality, and it is specified that "he shall measure said lumber after it is delivered dry at his yard," and further "that he is to measure such only as is absolutely clear," in a suit to recover the value of lumber which he has refused to measure, it is competent for the men who delivered the lumber to testify as to the quality of the lumber which he refused to measure. Under such a contract the defendant was not constituted the sole judge of the quality of the lumber.—*Mulliner* v. *Bsonson.*—Filed Sept. 23, 1885.—Ill.

QUESTION FOR THE JURY—DEEECTIVE HIGHWAY.—Where a railing has been erected in a town to mark the highway and has been permitted to get out of repair, it is a question for the jury to determine whether such a condition of things is such a defect as will make the town liable in case of injury arising therefrom.—*Pratt* v. *Amherst.*—Filed Oct. 23, 1885. — Mass.

RAILROAD COMPANIES—CONDEMNATION PROCEEEINGS.—An order appointing commissioners in condemnation proceedings is a final order. In such case the question whether lands sought to be condemned are for a public use and whether they are necessary therefor or not, is a question for the court.—*St. P. & N. P. Ry.* v. *State.*—Filed Nov. 4, 1885.—Minn.

RIGHTS OF WIFE TO DOWER—LAND CONVEYED ON THE DAY OF MARRIAGE.—Where land is conveyed on the day of the marriage of the grantor, without a valid consideration, the wife will be held to have the right of dower in said lands.—*Jones* v. *Jones*—Filed Nov. 3, 1885.—Wis.

RESULTING TRUST—AN ACTION TO ENFORCE—PARTIES DEFENDANTS.—In an action to enforce a trust, the judgment debtor may or may not be made a party defendant even though the wife be charged as trustee of her husband who is the judgment debtor. A husband may make his wife a prefered creditor where the debt is *bona fide*, but such a preference is regarded with suspicions.—*Leonard* v *Green*—Filed Sept. 20, '85—Minn.

RAILROAD COMPANY—DESTUCTION OF COUNTY BRIDGE—STATUTE OF LIMITATIONS.—Where in the construction of a railway a county bridge is destroyed and a new one built, the statute of limitations commences to run when the bridge is completed. The county commissioners has a right of action against the company for the damages sustained.—*Perry Co.* v. *Railroad Co.*—Filed Oct. 27, 1885.—Ohio.

RIGHTS OF JUNIOR MORTGAGEE—FORECLOSUUE OF A SENIOR MORTGAGE WITHOUT NOTIC.—Where the senior mortgagee forecloses his mortgage, the purchaser takes subject to the right of redemption by junior mortgagee. The junior mortgagee may maintain an action of foreclosure against the purchaser.—*Holliger* v. *Bates.*—Filed Oct. 27, 1885.—Ohio.

RIGHTS OF RAILWAY PASSENGER—NOT ENTITLED TO STOP OVER AND SUBSEQUENTLY USE HIS TICKET.—The purchaser of a railway ticket over the road between two given points is entitled thereby to one continuous passage, and if he stops off the train at an intermediate station, the railway company is not bound to honor his ticket on any other train unless it is so agreed. In ejecting a passenger from a train the company may put him off between stations, but not so as endanger him or expose him to injury—*Wyman* v. *N. P. Ry. Co.*—Filed Oct. 23, 1885—Minn.

RAILROAD COMPANY—OCCUPYING LAND FOR RIGHT OF WAY WITHOUT CONDEMNATION—RIGHT OF WAY OBTAINED FROM ONE HAVING COLOR OF TITLE ONLY.—Where a railroad company constructs their track on another's land without having the land condemned, the owner may commence an action for recovery of damages for the in-

jury sustained. Where land has been condemned for right of way, although work may have been done on it in grading, if it be abandoned by the company the title reverts back to the owner at the time of condemnation.—*Cohen* v. *St. L. F. S.* & *W. Ry. Co.*—Filed Oct. 9, 1885.—Kans.

RAILROAD COMPANY—NEGLIGENCE OF EMPLOYE BY WHICH A FELLOW LABORER IS INJURED—DAMAGES.—It is a rule of law now well settled that where an employe receives injury which is the direct result of the negligence of a co-employe, the master is not liable for damages for the injury. The leading cases on this point are: *Malone* v. *Burlington &c.*, 61 Iowa, 326; and *Foley* v. *C. R. I.* & *P. R. R. Co.*, 21 N. W. Rep. 124.—*Luce* v. *C. St. P. M.* & *O. Ry. Co.*—Filed Sept. 26, 1885.—Ia.

RIPARIAN RIGHTS—DIVERSION OF STREAM BY TWO OR MORE—JOINT ACTION.—A water right is barred by five years adverse possession. Where two several parties, acting separately at different times, each divert a stream from its course, an action for damages must be brought against them severally. A joint action against both will not lie.—*Evane* v. *Ross.*—Filed Sept. 30, 1885—Cal.

RAILROAD COMPANY—OBLIGATION TO FENCE TRACK—INSTRUCTION.—Where a railway company fail to comply with the statutory requirements in fencing their track, and live stock wander upon the track and are injured, the company may be compelled to respond in damages. If the court in giving instructions to the jury at the request of either party, in connection with giving the same, state to the jury at whose request the instruction is given it is not error. *Scott* v. *C. M.* & *St. P. Ry. Co.*—Filed Sept. 25, 1885—Ia.

RAILROD AID TAX—DEPARTURE FROM ORIGINAL ROUTE SURVEYED—FAILURE OF THE ORIGINAL COMPANY AND A NEW ONE FORMED.—Where aid has been voted in a county to a railroad, and the company subsequently change the route from the original survey but preserve the same terminal points, this change does not forfeit their claim upon the county. Where the original company fails and the bondholders buy in the property and proceed with the construction of the road as originally proposed, they are entitled to the funds voted in aid of the original company.—*County Commissioners* v. *Centre Tp.*—Filed Oct. 6, 1885.—Ind.

RAILROAD COMPANY—INJURY TO LIVE STOCK—MEASURE OF DAMAGES.—Where a person permits his stock to run upon his farm, which is inclosed by a fence, and a railroad runs through the farm which is not inclosed by a fence as the statute requires, the owner of the stock is not chargeable with contributory negligence so as to prevent recovery.—*A. T.* & *S. F. Ry. Co.* v. *Gabbert.*—Filed Oct. 9, 1885.—Kans.

RAILROADS—CONTRIBUTORY NEGLIGENCE—RIDING IN A DANGEROUS PLACE.—A person who voluntarily places himself in a dangerous place, and thereby contributes to an injury, cannot recover damages therefor. A party shipping horses and riding in the same car with the horses for the purpose of caring for them, is not guilty of contributory negligence in case of injury resulting from a collision. A carrier cannot avoid liability for damages resulting from gross negligence by stipulations in a special contract.—*Lawson* v. *C. St. P. M.* & *O. Ry. Co.*—Filed Sept. 22, 1885.—Wis.

RECORDING DEED—LIEN OF JUDGEMENT ATTACHES WHEN DEED FILED.—Where land is conveyed by deed and notes for purchase money given to be secured by mortgage, the mortgage must be executed and filed at the same time the deed is filed, otherwise any judgments held against the grantee will take precedence of the mortgage. The fact that the mortgage is for purchase money does not give it priority.—*Roan* v. *Baker.*—Filed Sept. 23, 1885.—Ill.

RAILROAD—FENCING OF TRACK—NEGLIGENCE OF OWNER OF STOCK.—If a railroad company fail to maintain sufficient fences and cattle-guards along its road, and cattle stray upon the track, it is no defence in an action for damages for killing of stock that the owner was negligent in allowing his cattle to run at large.—*Burlington & M. R. R. Co.* v. *Webb.*—Filed Sept. 29, 1885.—Neb.

REAL ESTATE—FORCIBLE EJECTMENT OF AN INTRUDER—One lawfully in possession of premises may use such force as is reasonably necessary to eject an intruder and will be held not liable for any injury arising therefrom if he uses only so much force as is reasonably necessary.—*Taylor* v *Adams*—Filed Sept. 29, 1885.—Mich.

RAILROADS—NOT REQUIRED TO FENCE THEIR DEPOT GROUNDS.—The statute requiring railroad companies to fence their track does not require them to fence their depot grounds, and where stock gets upon such depot grounds and are injured, recovery cannot be had on the ground that there was no fence.—*McGrath* v *D. M. & M. Ry. Co.*—Filed Sept. 29, 1885.—Mich.

REPLEVIN—GOODS UNDER CHATTLE MORTGAGE—RIGHTS OF MORTGAGEE.—The title to goods mortgaged does not pass to the mortgagee, but the mortgage simply gives him a lien on the goods. The judgment creditor levying upon goods mortgaged thereby accquires a lien which is secondary to the lien of the mortgage.—*Wilson* v. *Montague.*—Filed Sept. 29, 1885.—Mich.

RAILROAD CROSSING—CONTRIBUTORY NEGLIGENCE.—Where a person drives a team perilously near a railway crossing, and while a train is passing, the team becomes unmanageable and is injured, there is such contributory negligence as will bar recovery.—*Rhoades* v. *C. & G. T. Ry. Co.*—Filed Oct. 28, 1885.—Mich.

REAL ESTATE—CONTEMPORANEOUS INSTRUMENTS.—Where a deed absolute on its face is executed conveying certain lands, and at the same time a bond to reconvey the same is executed and the bond is filed a few minutes later than the deed, the bond is a defeasance and the two instruments will be construed as contemporaneous.—*Jeffrey* v. *Hursh.*—Filed Oct. 28, 1885.—Mich.

RULINGS ON FORMER TRIAL—PROOF OF INSTRUMENT—ERROR.—It is error to permit counsel to state in presence of the jury what the ruling was on a certain point on a former trial of the same cause. A witness who testifies to the execution of an instrument should be cross-examined fully before the instrument is offered in evidence.—*Bulen* v. *Granger.*—Filed Oct. 28, 1885.—Mich.

REASONABLE CARE—CONTRIDUTORY NEGLIGENCE.—Reasonable care may be shown by circumstantial evidence. When there is any evidence tending to show reasonable care, the question of contributory negligence is one for the jury to determine.—*Carver* v. *D.&S.P.R.Co.*—Filed Oct. 28, 1885—Mich.

RECONVEYANCE—DEED OBTAINED BY FRAUD.—A person of very limited intelligence was induced to make a deed of certain lands on the promise that a bond for reconveyance would be given him. The grantee afterwards refuses to execute the promised bond, and sells and conveys the property to another. In a proceeding in equity it is decreed that the land be reconveyed to him.—*Bugbee's Appeal.*—Filed Oct. 5, 1885.—Pa.

RECISSION OF CONTRACT UNDER SEAL—FORM OF ACTION.—Where a life insurance policy was issued and the premium on the same was payable quarterly, the assured continued to pay the premium for about ten years. At this time the assured chanced to be in default *one* or *two days* in the payment, and when tendered, the company refused to accept it and declared the policy forfeited. The assured then brings an action in *As-*

snmpsit for the recovery of premiums paid, and obtains judgment. *Held*, affirming the judgment, that an action of assumpsit would lie for the *recission* of a contract under seal.—*Am. Life Ins. Co.* v. *McAden.*—Filed Oct. 5, 1885.—Pa.

ROAD VIEWERS—REPORT MADE AND DISAPPROVED AND SUBSEQUENTLY APPROVED—Where the report of viewers in favor of building a bridge is disapproved by the grand jury, and the report is again submitted to another grand jury and approved, confirmed by the court an county commissioners, the validity of the proceedings may be questioned if taken in time, but where the bridge has been built and used for 14 years it is too late to question the proceedings.—*Myers* v. *Commonwealth.*—Filed Oct. 5, 1885.—Pa.

STATING THE WHOLE CASE IN INSTRUCTIONS—LIABILITY OF GUARDIAN FOR FAILURE TO PROVIDE FOR WARD.—Where the purport of an instruction is that it covers the whole case, and in fact it does not cover all the essential elements of the case it ought to be refused. A guardian having in charge an infant of 11 years, and failing to provide necessary clothing and food for the infant is liable for damages arrising from his neglect. —*Nelson* v. *Johnsen.*—Filed Oct. 6, 1885. —Neb.

SIDEWALK—CONSTRUCTED BY OWNER OF AND OUTSIDE OF THE TRAVELLED PORTION OF THE WALK.—Where a lot owner has constructed a sidewalk outside of the travelled portion of the street and in the line of the sidewalk as originally surveyed, the city is not bound to keep it in repair and is not liable for damages for injuries arising from defective condition of the same. —*Fitzgerald* v. *City of Berlin.* — Filed Oct. 13, 1885.—Wis.

SALE OF BUSINESS AND GOOD WILL—BREACH OF CONTRACT—CONSOLIDATION OF ACTIONS.—X. sold his stock and good will in business to Y., agreeing not to follow the same business again in the same vicinity. Y. and Z. continued the business as partners. X. in violation of his contract commenced business, and Y. and Z. brought suit against him for damages. Y. thereupon brought suit for the purchase money unpaid. The trial court consolidated the two actions. *Held* that the circuit court erred in consolidating the actions. *Held* further that X. had a right of action for breach of the contract.—*Winninghoff* v. *Wittig.*—Filed Oct. 13, '85. —Wis.

SLANDER — ACTIONABLE WORDS — DEMURRER.—The plaintiff, a butcher, kept a meat market, and defendant spoke of the plaintiff saying that "he had taken an unborn calf from a dead cow, dressed it, and sold a quarter of it" to a party whom he named. The plaintiff brings his action on these words to which the defendant demurred. *Held* that the words were actionable and the demurrer is overruled.—*Singer* v. *Bender*—Filed Oct. 13, 1885.—Wis.

SERVANT AND FELLOW SERVANT—PERSONAL INJURY—LIABILITY OF THE MASTER. —Where certain duties devolve upon the master, and he delegate another to perform the duty and a servant is injured by reason of the negligence of the one filling the place of the master, the legal consequence is the same as though the negligence was the personal act of the master, and the master is liable for the damages.—*Copper* v. *L. E. & St. L. Ry. Co.*—Filed Oct. 17, 1885.—Ind.

STATUTE OF LIMITATIONS—NEW PROMISE —ESTOPPEL.—A promise to pay after the statute has run will not revive a tort, but if the promise is made before the statute has run in consideration no suit will be commenced, and the plaintiff was thereby lulled into security and allowed the statute to run, the six years would commence to run from the date of this new promise.—*Armstrong* v. *Levan.*—Filed Oct. 5, 1885.—Pa.

SEWER—LIABILITY OF PROPERTY OWNERS FOR CONSTRUCTION—Where a municipal cor-

poration constructs a general system of sewers the abutting property owners may be compelled to pay their pro-rata share of the whole expense of constructing the entire system, and not only the actual expense of that part on which their property abuts.—*Leominster* v. *Conant.*—Filed June 25, 1885.—Mass.

SEWERS—OBLIGATIGN TO CONSTRUCT PROPERLY.—A municipal corporation is bound, in the construction of sewers, to do so with reasonable skill and care, and for damage arising from negligence in such construction an action in tort against the city may be maintained.—*Morse* v. *Worcester.*—Filed June 29, 1885.—Mass.

SET-OFF—WARRANTY—AN AGENT TO SELL HAS POWER TO GUARANTEE.—A set-off cannot be made unless there is a mutuality between the parties. An agent who has general authority so sell is presumed to have authority to warrant.—*Talmage* v. *Bierhause* —Filed Oct 13, 1885.—Ind.

STATUTE OF LIMITATIONS—NEW PROMISE TO PAY "AS SOON AS ABLE."—Where a debt is barred by the statute of limitations, and the debtor promises to pay as soon as he is able, the statute begins to run as soon as he is able to pay. As to when he is able to pay is a question for the jury.—*Tebo* v. *Robinson.*—Filed Oct. 6, 1885.—N. Y.

SALE—DEFENSE TO NOTE GIVEN FOR PURCHASE MONEY.—A party having sold some live stock and delivered them at the place of shipment where they were weighed a dispute arose as to the correctness of the scales by which they were weighed. A settlement was finally made by the weight as there given, and payment was made partly in cash and partly by note. The maker of the note being sued on the same defended on the ground that the scales did not weigh correctly. *Held* that having settledby the weight given and having actual knowledge of the condition of the scales at the time, he was bound by the settlement made. — *Wood* v. *Dickioson.*—Filed Oct. 9, 1885.—Kans.

STATUTE OF LIMITATIONS—DOES NOT RUN AGAINST THE SOVEREIGN AUTHORITY.—The statute of limitations will not run against the state where it had not commenced to run when the state obtained the claim. Where bonds are issued under an act requiring them to specify on their face for what purpose the bond is issued, and bonds being issued which declare on their face that they are issued in accordance with the said act, but do not state specifically the purpose for which they are issued, *Held* that there being only one purpose for which the said act allowed bonds to be issued they were a valid claim agains the district.—*State* v. *School District.*—Filed Oct. 9, 1885.—Kans.

SET OFF—PARTNERSHIP DEBT OF FIRM AS AGAINST AN ACTION BY ONE OF THE FIRM.—Two persons associated as partners are indebted to a third party. The former sells and transfer all their assets to the latter, and receives notes of the latter in payment. Therupon the former partnership is dissolved and settled as between the partners and one of the partners receives the notes refered to. Upon an action to recover on one of these notes it is sought to set-off a debt due the makers of the note from the firm of which the goods were purchased. *Held* that the set-off must be denied.—*Gardner* v. *Fargo.*—Filed Sept. 29, 1885.—Mich.

SALE ON EXECUTION—APPLICATION OF SURPLUS PROCEEDS OVER DEBT—LIABILITY OF SHERIFF ON HIS BOND.—Where, on foreclosure of a mortgage, there remains in the sheriffs hands a surplus over the lien or debt, the sheriff and his bondsmen are liable for the fund although it be not demanded of him until after his term of office expires.—*Hubbard* v *Elden*—Filed Oct. 6, 1885—Ohio.

SCHOOL HOUSE EXEMPT FROM TAXATION —PROPERTY USED FOR SCHOOL PURPOSES NOT INCLUDED.—A statute providing that

school houses and seminaries of learning shall be exempt from taxation makes an exception that in the city of New York the property must be exclusively used for school purposes and must be owned by the society maintaining the school. Where property was owned by an individual, and leased for a term of 21 years for school purposes *Held* not exempt from taxation.—*Hebrew School Asso'n.* v. *Mayor &c.*—Filed Oct. 6, 1885.—N. Y.

SALE OF REAL ESTATE BY PAROL AGREEMENT—ATTACHMENT.—Sale of land by parol agreement does not pass title, and levy and attachment served upon the grantor before deed is executed takes precedence of the agreement to convey and becomes a lien from the time of levy.—*Allison* v *Graham*—Filed Sept. 26, 1885.—Ia.

SURETYSHIP—RELEASE—RIGHT OF SURETY—A surety has a right to demand of the creditor that he do not release any hold which he may have on property of the debtor. If property be relinquished by the creditor the surety is discharged to the amount of the value of the property so relinquished.—*Bedwell* v. *Gephart.*—Filed Sept. 26, 1885.—Ia.

SERVICE OF PAPERS—NOTICE SERVED ON THE COUNSEL'S CLERK.—Notice of entry of judgment being served on the managing clerk of opposite counsel *Held* sufficient service. A notice limiting the time for appeal must be strictly regular, otherwise it will be void.—*Falker* v. *N. Y. W. S. & B. Ry. Co.*—Filed Oct. 1885—N. Y.

SHERIFF'S SALE—MADE IN FRAUD OF CREDITORS.—Where property is subjected to sale by the sheriff, made by collusion, to defraud creditors, the sale will be set aside upon application of a creditor who has subsequently obtained a judgment.—*Millspaugh's Appeal*—Filed Oct. 6, 1885—Pa.

SEALED INSTRUMENT—ACTION ON—FORM OF.—An action for breach of contract under seal must be in debt or covenant. If the contract under seal provides that it may be modified by parol that does not make the entire contract parol.—*Hamilton's Appeal*—Filed Oct. 5, 1885.—Pa.

TENANTS IN COMMON—CONVEYANCE TO AN UNINCORPORATED ASSOCIATION.—Where real estate is conveyed to an unincorporated association the individual members of the association hold as tenants in common.—*Byam* v. *Rickford*—Filed June 25, 1885.—Mass.

TENANT—SUBLESSEE—LEASE IN NAME OF ONE FOR THE BENEFIT OF ANOTHER.—Where the manager of a company took a lease of premises for the use of the company of which he was manager, but had the lease written to him in his own name, it is *held* that he is the lessee, and that the company occupying the premises is a sublesee under him.—*Haley* v. *Boston Belting Co.*—Filed Sept. 3, 1885.—Mass.

TIME OF PAYMENT—COMPOUNDING INTEREST.—Under a contract wherein certain sums of money are payable semi-annually, and it is provided that interest shall be paid annually on such payments as are not made when due, at the rate of 10 per cent per annum after they are due, the creditor cannot compound the interest on such defered payments after due.—*Morgan* v. *M. C. Ry. Co.*—Filed Sept. 28, 1885.—Mich.

TROVER AND CONVERTION—COLLATERAL SECURITY.—Where a party deposits notes with a banker for collection, and the banker applies the proceeds to the payment of a debt due from the depositor and refuses to pay it over upon demand, an action to compel the payment cannot be sustained.—*Cribb* v. *Houghton*—Filed Nov. 3, 1885.—Wis.

TRIAL.—DISCRETION OF JUDGE IN GRANTING A CHANGE OF VENUE.—Where a change is asked and objected to on the ground of inconvenience of witnesses it is in the dis-

cretion of the judge whether he grant the change or not. Where an action has been commenced in the wrong county, the defendant has an absolute right to a change.—*Kleiners* v. *Leob*—Filed Nov. 3, 1885.—Wis.

TRADE-MARK—MAY BE PROTECTED ALTAOUGH UNPATENTED.—A manufacturer or vendor who adopts a certain name or symbol as a trade-mark, and advertises the same to the world as such trade-mark may protect himself in such right although he has not registered the same.—*Smith* v. *Imus*—Filed Sept. 29, 1885.—Mich.

TELEGRAPH COMPANY—NEGLIGENCE—CONTRBUTORY NEGLIGENCE.—A person sending a telegram who refuses or neglects to give the christian name and the street number of the residence of the one to whom it is sent, is guilty of contributory negligence, and cannot recover damages for failure to deliver the message although the company is guilty of negligence.—*W. U. Tel. Co.* v. *McDaniel.*—Filed Oct. 13, 1885.—Ind.

TRUSTS TO BE EXECUTED AFTER DEATH—USES AND TRUSTS.—A trust of personal property is not within the statute of uses and trusts. Money delivered to one who undertakes to expend it after the death of the donor, for funeral expenses, or a monument, or for masses for the soul of the deceased is a valid trust and will be upheld.—*Gilman, Admt.* v. *McArdle.*—Filed Oct. 6. 1885.—N. Y.

TAX SALE—TIME FOR REDEMPTION—WHEN LAST DAY FALLS ON SUNDAY.—The owner of land sold tor taxes has three years in which to redeem it. Land sold on September 4th 1878, and redemption notice stated that it would be conveyed to the purchaser on September 4th 1881, unless redeemed *prior to that time. Held* that this did not allow the owner three years to redeem. It was also *held* that as Sept. 4, 1881, fell on Sunday that day should not be counted, and the three years did not terminate until the close of the day of Monday.—*English* v. *Williamson.*—Filed Oct. 9, 1885,—Kans.

TRADE-MARK—SIMILARITY OF NAME—INFRINGMENT.—One company is organized and doing business under the name of "Drummond Tobaco Company," and another is formed and proposes to do business under the name "Drummon-Randle Tobacco Company." An injunction is asked for by the former to restrain the latter from doing business under this name alleging an infringment of their name which they had long used as a trade-mark, *Held* not entitled to an injunction unless damages could be shown and proved.—*Drummond Tobacco Co.* v. *Randle.*—Filed Sept. 25, 1885.—Ill.

TAX SALE—TENDER OF TAXES DUE—PENALTY.—The tender of all taxes due, made to the proper officers, before the expiration of the time for redemption, makes void a deed given for the land so sold, and the purchaser cannot recover the statutory penalty.—*M. M. Life Ins. Co.* v. *Kroh.*—Filed Oct. 19, 1885.—Ind.

TELEGRAPH COMPANY—DELAY IN SENDING MESSAGE—BURDEN OF PROOF.—Where the sender of a message proves unreasonable delay in sending and delivering the message, the burden of proof is on the company to explain the delay. A rule of the company must be specially pleaded to be available as defense.—*W. U. Tel. Co.* v. *Scircie.*—Filed Oct. 10, 1885.—Ind.

TAXES—ILLEGAL COLLECTION OF—LIABILITY OF COUNTY TO REFUND.—Where state taxes have been collected by the county treasurer and paid over to the state, the county cannot be held to reimburse or pay back the amount even though the tax was illegally collected.—*Price* v. *Lancrster Co.*—Filed Sept. 29, 1885.—Neb.

TOWNSHIP TRUSTEES—DISCRETIONARY POWER—MANDAMUS WILL NOT LIE TO COMPEL AN ACT WHICH THE STATUTE MAKES

DISCRETIONARY.—Township trustees having purchased land for cemetery purposes, subsequently determine not to use it for that purpose and it is sought to compel them by proceedings in mandamus to use it for the purpose for which it was conveyed to them. *Held* that where the statute vests a public officer with discretionary power in the discharged of a duty he cannot be compelled to perform the duty by *mandamus*.—*Christy* v. *Withmore*.—Filed Sept. 26, 1885.—Ia.

TOWN PLAT—DEDICATION OF STREETS—IN WHOM IS TITLE TO THE STREET?—When a town plat is filed for record the title in fee passes to and vests in the municipal corporation. If the street is subsequently abandoned, the fee reverts back to the party who dedicated the same to the public by the town plat.—*M. & H. Zinc Co.* v. *City of LaSalle*.—Filed Sept. 21, 1885.—Ill.

TITLE TO NEWSPAPER—INFRINGMENT—TRADE-MARK.—A newspaper called the *New Northwest* was established in Portland in 1871. In 1883 another paper was established under the name of the *Northwest News*. The proprietors of the former seek to enjoin the latter from continuing the publication on the ground that the latter name is an infringement on the rights of the former proprietors. *Held* that in the absence of intentional fraud an injunction would not be granted.—*Duniway Pub. Co.* v. *N. W. Pub. Co.*—Filed March Term 1884.—Org.

TAXATION—WARRANT TO COLLECT WITH INTEREST.—Where taxes are delinquent and the warrant to the collector does not direct that interest be collected, the collector has no right to collect interest, and if he does so by arrest, he may be amerced in damages for an illegal arrest. Interest cannot be collected in such case, unless the time of payment has been deffinitely fixed by vote. —*Snow* v. *Weeks*—Filed Aug. 6, 1885—Me.

TRUSTEE PROCESS—ONE CLAIMING UNDER AN ASSIGNMENT—EVASIVE ANSWERS UNDER EXAMINATION.—One who claims funds attached by trustee process when under examination must give full and clear answers as to the circumstances under which he claims title. If he is vague and evasive his claim will be declared invalid.—*Thompson* v. *Reed*.—Filed Aug. 6, 1885—Me.

TRANSFER OF CLAIM TO ANOTHER STATE —GARNISHMENT.—A creditor of an employe of a railroad company in Indiana transfers his claim to a citizen of Kentucky, who thereupon brings a suit and garnishees the wages of the debtor in the hands of the railroad company. The debtor subsequently brings suit for damages against the creditor on the ground that he has thus been deprived of his right under the exemption law of Indiana. *Held* that an action will not lie and a demurrer to the complaint is sustained.—*Uppinghouse* v. *Mundel*.—Filed Oct. 13, 1885.—Ind.

TURNPIKE COMPANIES—LEGAL RESIDENCE OF A CORPORATION.—In an action against a turnpike company for damages for personal injury arising from defective condition of the roadway, it is *Held*, 1st that a corporation has a legal residence wherever it exercises corporate powers; 2nd that it was the duty of the company to keep their whole roadway in good repair, and 3rd that although the suit was brought in Baltimore city the record shows that the suit was instituted in Baltimore county.—*B. & Y. T. R. Co.* v. *Crowther*—Filed June 23, 1885.—Md.

TITLE—INTENTION EXPRESSED BY DEED. —Where the title to land is in the husband and wife, and they unite in a deed to a third party, and the grantee, on the same day, conveys the same property back to the husband alone, the intention to vest the whole title in the husband is sufficiently expressed without any extrinsic evidence.—*Seiber* v. *Oles*——Filed Oct. 5, 1885.—Pa.

TAKING LANDS FOR PARKS—TITLE CONTAINING MORE THAN ONE SUBJECT.—An

act authorizing the laying out of parks, and providing for the taking of a portion of a certain park for a rifle range. *Held* not invalidated by reason of more than one subject expressed in the title. These were not separate subjects. The taking of lands for a park lying beyond the city limits, for "city purposes" is within the power of the authorities controlling the parks.—*In Re Mayor of N. Y.*—Filed Oct. 6, 1885.—N. Y.

TITLE FROM TAX SALE—PRESUMPTIONS OF REGULARITY.—In a sale by the comptroller for taxes unless there is positive evidence of irregularity, the proceedings will be presumed to have been regular. It is sufficient if the comptroller's list state that the lands were liable, and would be sold for the taxes. Where the publication is required to be made for the "space of ten weeks," it is complied with by two weekly publications the last being made on the first day of the 10th week.—*Wood* v. *Knapp.*—Filed Oct, 6. 1885.—N. Y.

TESTIMONY OFFERED AFTER CLOSE OF CASE — DISCRETION OF MASTER. — In a refference to a master, where the case is closed by agreement of counsel, it is discretionary with the master whether he again opens the case and receives additional testimony or not.—*Messinger's Appeal.*—Filed Oct. 5, 1885.—Pa.

USE OF WATER FOR MILL-POWER—INJURY—INJUNCTION.—Where several mill-owners are using water power from a common source, and one files a bill alleging that all the others are using more water than they were entitled to use, and asking an injunction restraining them from such excessive use of water, an injunction will not be granted. The allegation should be against each defendant separately, and not against them collectively. A demurrer to the bill will be sustained.—*Westbrook Mfg. Co.* v. *Warren.*—Filee Aug. 6, 1885.—Mich.

UNRECORDED DEED—REFORMATION OF DEED.—Land was conveyed in May 1879, but the deed was not recorded until February 1882. In May 1880 the same grantor conveyed another strip of land and by the description the land conveyed lapped over and included a strip of the land formerly conveyed in May 1879, and this latter deed was recorded in October 1880. By proceedings to have the former deed of 1879 reformed, judgment was had reforming the the same so that no conflict existed between the description of land in the two deeds. In an action of ejectment by the grantee in the former, against the grantee in the latter deed, to recover the strip of land in controversy it is *held* that the deed as reformed was valid and passed title to the grantee.—*Cutler* v. *James*—Filed Oct. 13, 1885.—Wis.

UNRECORDED MORTGAGE—SALE OF MORTGAGED LANDS.—Where land has been mortgaged, the mortgage unrecorded, and the owner or mortgagor sells the land and takes a mortgage back to secure the purchase money, the owner of the unrecorded mortgage can enforce his claim against the grantor's interest in the mortgage taken by him for purchase money.—*Building Ass'n* v. *Clark.*—Filed Oct. 27, 1885.—Ohio.

UNLAWFUL DETAINER UNDER LEASE—ENFORCING PAYMENT OF COSTS.—Where a tenant has unlawfully remained in possession of premises after the termination of lease, and where judgment of restitution has been rendered by a justice of the peace, the defendant may be arrested and imprisoned to enforce the payment of the costs in the proceedings.—*Toal* v. *Clapp.*—Filed Oct. 1, 1885.—Wis.

USURY—ACCOMMODATION INDORSER—NOVATION.—Where a promissory note is made and at maturity an extension is granted on the whole or on part, and the note renewed one or more times, upon the payment of usurious interest, and subsequently the indorser on the first series of notes takes up notes of the maker and gives hss own note for the debt, in an action

against the maker of the latter note he can effectively plead the payment of usurious interest by the former maker or original debtor. It is not novation, but a continuance of the same transaction, and the taint of usury attaches to the note last given.—*Schutt* v. *Evans*—Filed June 6, 1885.—Pa.

USURY—MORTGAGE MADE TO A THIRD PARTY AND TRANSFERED TO THE REAL MORTGAGEE — INCONSISTENT DEFENSES.—Where a loan is negotiated at usurious rates, the mortgage made to a nominal mortgagee and then assigned to the real mortgagee, the fact may be shown on a plea of usury. A plea ot usury and that the real amount of the debt with legal interest has been tendered are inconsistent. The tender of the amount due, before foreclosure will extinguish the security.—*Breunich* v *Weselman* —Filed Oct. 6, 1885.—N. Y.

VOLUNTARY ASSIGNMENT—PREEFRENCES —MUST BE BY SEPARATE INSTRUMENTS.—A debtor in failing circumstances who makes an assignment for the benefit of his creditors, cannot in the same instrument of assignment give preference to one over another. He may prefer one or more creditors but he must make a separate conveyance by mortgage or otherwise to the one prefered.—*Grubbs* v. *Morris*—Filed Oct. 8, 1885.—Ind.

VOLUNTARY ASSIGNMENT FOR BENEFIT OF CREDITORS—ATTACHMENT.—Where insolvent debtors prepare an assignment intending to deliver it, and the sheriff comes to them having in his possession a writ of attachment againsr their property, but before he makes or attempts to make a levy of the attachment they deliver to him their general assignment, title passes to the assignee, and the attachment if levied subsequently is void.—*Wells* v. *Lamb.*—Filed September 29, 1885.—Neb.

VERDICT—CONCLUSIVE—TIME OF PRESENTING INSTRUCTIONS.—Evidence having been submitted tending to prove a certain fact or facts, and being passed upon by a jury, the finding of the jury is conclusive. A trial court may establish a rule as to when instructions must be presented, and when sufficiently published the rule is binding on the court and no discretion allowed.—*Ill. Cent. Ry. Co.* v. *Haskins*—Filed Sept. 23, 1885.—Ill.

VENDOR AND VENDEE—SALE OF TOWN LOTS—DEDICATION.—Where a plat of town lots with streets and alleys has been made and from which lots have been sold, although the dedication of streets has not been perfected by the proper recording of the plat, the sale of lots from the plat is an implied dedication of the streets in so far at least as the grantee's rights are affected by it.—*Hurley* v. *M.* & *R. R. Boom Co.*—Filed Sept, 30, 1885.—Minn.

VENDOR AND VENDEE—BUILDING LINE—VIOLATION OF IN BUILDIMG.—Where the conditions in a deed provide that the building, if erected, shall be at least 20 feet from the street line, and the grantee erects his building 20 feet back from the street, but erects a piazza, above the first story which extends out six feet, it is a violation of the covenants in the deed.—*Bognall* v. *Davis*. —Filed Sept. 3, 1885.—Mass.

WILL—APPLICATION OF PERSONAL PROPERTY TO PAYMENT OF DEBTS.—Where in a will it is provided that all the personal, and one half the real property shall go to the widow, one fourth of the realty to a legatee and a part of the remaining fourth is given to other legatees and the remainder to be devided between one of the legatees and the widow, and no provision is made in the will for the payment of debts, the last quarter thus to be divided between one of the legatees and widow may be made to bear one fourth of the debts. Unless it is otherwise clearly intended the personal property must be applied first to the payment of the debts. — *Risk's Appeal.* — Filed Oct. 5, 1885.—Pa.

WILL—CONSTRCTION OF—INTENTION.—The intention of the testator if clearly discovered, will always prevail in the construction of a will, unless in conflict with the well settled policy of the law. Upon the death of a life tenant, an absolute fee vests in the next taker unless there be words of limitation in the will.—*Henderson* v. *Henderson*——Filed June 25, 1885.—Md.

WITNESS—TWO CONVEYANCES OVERLAPPING.—Where two conveyances were made by the same party to two grantees, one dated March 27, 1862 and the other April 28, 1862, and by mistake in the description both deeds included a certain lot, the testimony of the surveyor who surveyed both tracts of land, being called by both parties, his testimony uncontradicted will prevail. — *Thompson* v. *Kanfelt.* — Filed Oct. 5, 1885.—Pa.

WITNESS—A PARTY IMPEACHING HIS OWN WITNESS.—A party cannot impeach his own witness unless it be one whom the law obliged him to call. He may however ask his witness if he has not made contradictory statements in regard to the subject matter of his testimony. — *Hildreth* v. *Aldrich.*—Filed Oct. 17, 1885.—R. I.

WILL—LIFE ESTATE—RIGHT TO POSSESSION—SECURITY REQUIRED OF A DONEE OF LIFE ESTATE.—The donee of a life estate cannot be required to give security for its safe keeping unless in case of real danger. Where the widow is the donee of a life estate, and she is charged with the maintainance and education of children, she is invested with an implied power of sale of so much of the property as is necessary to carry out the provisions of the will.—*In Re Will of Oertle.*—Filed Oct. 3, 1885.—Minn.

WILL—RIGHT OF ELECTION BY THE WIDOW—PRESUMED INTENTION—Since 1875 the common law rule as regards the election by the widow of a decedent is in force, and is applicable. Unless otherwise clearly intended by the will she may take by descent or by will. Where a testator uses such expression as "all my estate" etc., he is *prima facie* presumed to intend only what property he had absolute control of and power to dispose of.—*In Re Estate of Gotzian.*—Filed Sept. 30, 1885.—Minn.

WILL—CONTESTANT—EVIDENCE—Where a will is contested by one claiming an interest in the estate the proponent should be permited to testify regarding matters which must have been within the knowledge of deceased. Where it is desired to take advantage of the presumption of undue influence arising from the fact that the will was drafted by one of the beneficiaries, the fact must be set out in the pleadings.—*Brown* v. *Bell*—Filed Sept. 29, 1885.—Mich.

WASTE—LIABILITY OF EXECUTOR. — In the Massachusetts practice an executor or administrator cannot be held liable on suggestion of waste as in english practice. On his bond, as executor, he cannot be held individually liable for the payment of legacies.—*Jenkins* v. *Wood.*—Filed Sept. 3, 1885. — Mass.

WILL — CONSRTUCTION OF AMBIGUOUS CLAUSE—Where the language of a will is ambiguous, the court will endeavour to ascertain the meaning and intention of the testator by considering the circumstances surrounding the testator when the will was executed. — *Dew* v. *Kuehn.*— Filed Nov. 3, 1885.—Wis.

WILL—UNDER INFLUENCE—In the making of a will to induce the testator to reach a wrong conclusion is undue influence. Inducing a person of feeble mind to do that which is for his own good is not undue influence although the person exerting the influence is benefited thereby. The law presumes undue influence where itls made in favor of a medical, legal or spiritual adviser or where close confidentialrelations exist.—*Samson* v. *Samson*—Filed Oct. 22, '85.—Ia.

Ashley v. *Rockwell.*
Filed October 6, 1885.—Ohio.
(Statute of limitations applicable to married women in their separate estate.

Argersinger v. *Cline.*
Filed September 26, 1885.—Ia.
(Evidential—Breach of warranty.)

Brydon, use of etc. v. *Livingston.*
Filed July 22, 1885.—Md.
(No questions of law involved.)

Bowman v. *People.*
Filed September 25, 1885.—Ill.
(Action to recover taxes on lands forfeited—Declaration must allege ownership in land.)

Board of Supervisors v. *Allen.*
Filed Oct. 6, 1885.—N. Y.
(Regulating the salary of county treasurers of Monroe and Seneca Co's.)

City of Chicago v. *James.*
Filed September 21, 1885.—Ill.
(Taxation of foreign Insurance companies)

Connor v. *Babbet.*
Filed September 24, 1885.—Ia.
(Defense of usury set up by guarantor.)

Dennis v. *State.*
Filed September 26, 1885.—Ind.
(*Evidential*—and sufficiency of indictment)

Ex. parte Hopkine.
Filed October 9, 1885.—Ind.
(Partners cannot claim an exemption of any partnership property.)

First National Bank v. *Hartman.*
Filed Oct. 5, 1885.—Pa.
(Holding that the words "Protest waived" are sufficient to dispense with notice to endorser.)

Geveke v. *G. R. & I. Ry. Co.*
Filed Sept. 25, 1885.—Mich.
(An action for damages for personal injury—Question of negligence.

Hastings v. *Lovejoy.*
Filed October 21, 1885.—Mass.
(Holding that an oral agrement for abatement of rent, although the lease is under seal, is valid.)

Hnghes v. *Sweeney.*
Filed October 1885.—Iowa.
(Conflicting testimony—Finding of trial court—Appellate court will not interfere.)

Herrick v. *Musgrove.*
Filed September 26, 1885.—Ia.
(Evidential.—Sufficiency of evidence.)

Hunting v. *Board of Equalization.*
Filed Sept. 25, 1885.—Ia.
(Relating to cutting down an assessment.)

In Re Waite Assignee.
Filed October 6, 1885.—N. Y.
(Holding that a foreign assignee may appear and maintain suit against debtors of a bankrupt whom represents.)

Powell v. *Powell.*
Filed Octobar 28, 1885.—Mich.
(Where a husband suspects his wife of adultery, and she leaves him on account of such suspicion, he cannot claim a divorce on the grounds of such desertion.)

McBain v. *Seligman.*
Filed October 28, 1885.—Mich.
(Holding that an indorsement as agent is sufficient notice that the indorser is not the owner.)

Street Ry. Co. v. *Wildman.*
Filed Oclober 28, 1885.—Mich.
(Holding that an injunction will not be granted to restrain from doing an act which has already been done.

Serrin v. *Grefe.*
Filed October 21, 1885.—Iowa.
(Holding that the title to lands bordering on the Des Moines river, extends only to highwater mark.)

In Re Valentine.
Filed October 6, 1885,—N. Y.
(Appellate court will not review a question of fact where a surrogate's decision is supported by evidence.)

In Re Desbrow's Estate.
Filed September 29, 1885.—Mich.
(Defining what will constitute undue influence as applied to the execution of a will.)

In Re Appeal of Baker, of Barge, and of the American Academy of Music.
Filed Oct. 5, 1885.—Pa.
(Question of the transfer of corporate stock)

Lansing v. *Johnson.*
Filed October 6, 1885.—Neb.
(Evidential—No question of law.)

Lane v. *Lane.*
Filed September 26, 1885.—Iowa.
(Question of sufficiency of evidence to establish desertion as ground for divorce.)

L. K. R. W. D. Co. v. *K. R. & F. C. Co.*
Filed Sept. 29, 1885.—Cal.
(On the question of discretionary power of the court to allow amendments in pleadings.)

L. E. & St. L. Ry. Co. v. *Payne.*
Filed Oct. 7, 1885.—Ind.
(Question of sufficiency of complaint.)

Long v. *Smith.*
Filed September 24, 1885.—Iowa.
(Redemption of land sold for taxes.—May redeem within 90 days after notice of expiration of redemption.)

McAndrew v. *County of Madison.*
Filed Sept. 26, 1885.—Ia.
(Action for bastardy—County not liable for costs.)

Moore v. *Graham.*
Filed September 29, 1885.—Mich.
(Holding that in case of misnomer no amendment shall be allowed if it would prejudice the rights of third parties.)

National Benefit Association v. *Jackson.*
Filed September 23, 1886.—Ill.
(Practice.)

Nelson v. *Village of Canisteo.*
Filed October 6, 1885.—N. Y.
(Holding that where an incorporated village has power to abate a nuisance it is bound to do so.

People v. *Devon.*
Filed September, 28, 1885.—Cal.
(Conviction for sending a false telegram not sustained where the sender did not intend deceiving.)

Peopte v. *La Rue, et al.*
Filed September 28, 1885.—Cal.
(An action concerning the reclamation of swamp lands.)

Pease v. *Thompson.*
Filed September 26, 1885.—Ia.
(Evidential—Sufficiency of in establishing a mechanics lien.)

Pennsylvania Co. v. *Eberhardt.*
Filed September 21, 1885.—Jll.
(No question of law involved.)

Pratt v. *Street Commissioners.*
Filed June 25, 1885.—Mass.
(Holding that corporate stock of a foreign railroad is taxable for State, County, and City purposes.)

Roberts v. *State.*
Filed October 9, 1885.—Kans.
(Holding that where a sheriff, accepts a bond in greater amount than ordered by the court, the bond is void.

Sconlon v. *City of Boston.*
Filed September 3, 1885.—Mass.
(Holding that it is the duty of railway companies to keep the crossings of highways in good and safe condition.)

Storrs v. *Storrs.*
Filed September 29, 1885.—Mich.
(Evidential—pertaining to enforcing a demand for reconveyance of land.)

Thompson v. *Benepe.*
Filed Oct. 6, 1885. Iowa.
("Vacation" defined.)

Walker v. *S. C. & S. F. Town Lot Co.*
Filed Sept. 24, 1885.—Ia.
(Practice.—No question of law.)

Wright v. *Central Cal. Water Company.*
Filed Sept. 28, 1885.—Cal.
(Action to set aside corporate election of officers.

Wise v. *Chaney.*
Filed Sept. 26, 1885.—Ia.
(Administrator in contempt for non payment of money ordered by the court cannot purge himself of contempt by stating that the money was paid out wrongfully.)

Zorutlein v. *Bram.*
Filed Oct. 6, 1885.—N. Y.
(No points of law involved—Construction of chap 472, Laws of 1880.)

NEW PUBLICATION.

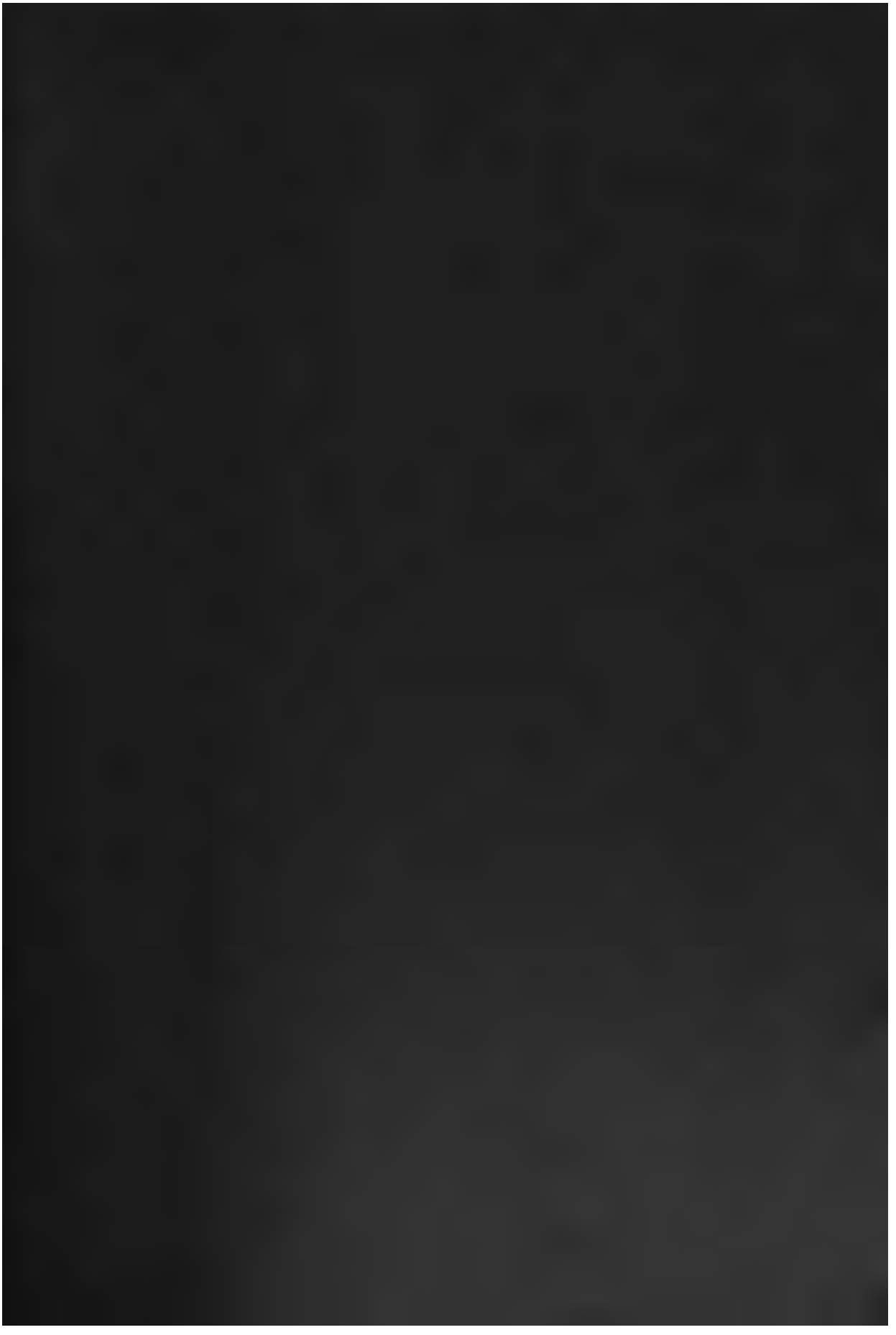
A TREATISE on the law of Contributory negligence, by Charles Fisk Beach, Jr., Counsellor at law.
NEW YORK. BAKER VOORHIS, & CO.

Another timely and valuable book, from the press of this well known publishing house, is offered to the profession. Some inventors waste the energies of a life in producing useless inventions without the power to discriminate between the practical and impractical. Some publishers waste not only their eneergies but expend large sums of money in the publication of books without the power to discriminate between the useful and worthless. The publishers of this book, whether by intuition or by experience, seem to have that power of discrimination in an uuusual degree.

With very few exceptions each book issued from their press comes to the earnest, active and busy lawyer as a rich and well served repast to a hungry and weary traveller. This treatise on contributory negligence is no exception to the general rule. We cannot better express what we think of the book than by quoting frcm a review of it by Wm. W. Thum, Esq., Counsel for the Louisville & Nashville R. R. Co. He says:

"Beach on Contributory Negligence" is the most recent work on the subject of negligence. It is by Chas. F. Beach, Jr., of the Louisville bar, and is a book likely to take and hold a high rank. The topic is an extremely interesting one, as it involves so often questions of moral as well as legal right and wrong. The principles of the law of negligence in this country, and particularly in the State of Kentucky since the time of Judge Robertson, have reached a broad and reasonable, and in the main, harmonious developement. Mr. Beach has admirably sketched the growth of the law and succinctly and clearly set down the state of the law as it is. A very noteworthy characteristic of the work is its clearness. When a proposition is stated, the reader knows what the author exactly means, even where the distinctions are narrow and close. Certainly this is a valuable and not to common merit in legal writing. The book does not shirk critical and nice questions, but marches up to them and gives with fullness and intelligibility the gist and result of the decided cases upon the subject in the various States, and then proceeds to reason upon the question, if it be still an open one; and, if you do not always agree with the conclusions reached, you can not complain of want of entire fairness of statement, either of the premises involved or of the decisions of courts already rendered upon the point in issue. The book is rich in reference to Kentucky cases, although it does not treat of the McCoy case, in which is enunciated and distinguished the noteworthy refinement of permitting *willful* contributory negligence to be proven as a defense to "willful negligence." Yet it must admitted that this nicety does not seem to have taken hold in the Kentucky law of negligence, and was *obiter dictum* in the McCoy case. Mr. Beach's work, like that of most modern law books, is chiefly valuable for its statement of results and conclusions, the citations of authorities being also very numerous and valuable; but it may also be commended for its animated and vigorous style and the judicious common sense of its general reflections. All the main divisions of the subject—"Master and Servant," "Railroads," "Burden of Proof," etc., etc, are treated with minute and exhaustive detail within the range of the authors subject. The book is a useful addition to legal literature.

As in the higher departments of the fine arts, the exquisite skill of the artist is manifest in the harmony of music, or in the blending of colors and shades to produce the best effect in the painting, so in questions often arising where the issue involves contrbutory negligence, the distinctions require the most subtle, accute and logical mind to properly apply the rules of justice. In this work the author has shown, in a peculiar degree, his power to analyze and define these delicate distinctions by a clearness of comprehension and statement of the facts.



The Chicago Law Journal.

CHICAGO, JANUARY, 1886.

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—Where abortion is charged in an indictment and the dying declaration of the victim is admitted in evidence upon the trial, it is ground for reversal. Dying declaration are restrict to cases in which death is the subject of the charge, and the circumstances of the death is the subject of the declaration. When the victim has died and aboriion only is charged in the indictment, the death of the woman is not necessarily and ingredient of the crime charged. —*Railing* v. *Commonwealth.*—Filed Oct. 5, 1885.—Pa.

A number of errors appear in the first sixteen pages, due to the negligence of our printer, and not discovered by us, until too late to correct, which we beg our subscribers will excuse.—ED.

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ABORTION — DYING DECLARATIONS. — DEATH RESULTING FROM CRIMINAL ABORTION

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AGENT—REAL ESTATE BROKER— CONTRACT NOT IN WRITING.—A broker who contracts to exchange real estate for his principal cannot recover on such contract unless it be in writing and signed by the principal.—*Myers* v. *Surryhne.*—Filed Nov. 19, '85—Cal.

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ACCOTNT STATED—ACTION ON—CONSIDERATION.—Where an account has been disputed and the parties come together and agree upon a settlement, the account thus stated is a sufficient consideration for an action to enforce paymeut, even though the debtor may be subsequently able to prove that he does not owe the amount so stated. A question of duress is one to be decided by the jury after considering all the circumstances.—*Dunham* v. *Griswold.*—Filed Oct. 27, 1885.—N. Y.

ACCOUNT STATFD—BURDEN OF FROOF.—Where a settlement has been had and an account stated the court will support the settlement unless there has been fraud in the statement of the account. Where a note has been given for the balance and subsequently the maker of the note alleges this there is certain sums due him from the other party, the burden of proof is on him to show that such sum was not included in the settlement.—*Keller* v. *Keller.*— Filed Nov. 4, 1885.—Neb.

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drew his check, before leaving home for a few days, in favor of his clerk dating it April 22nd, and left it with his clerk for the purpose of paying laborers on the 22nd, and on the 21st, the clerk in whose favor the check was drawn changed the date to the 21st, drew the money and absconded. *Held* that the bank was liable to the maker of the check for the amount thus wrongfully drawn.—*Crawford* v. *West Side Bank.*—Filed on Oct. 6, 1885.—N. Y.

APPEAL—LIMITATION—MOTION TO STRIKE OUT PART OF THE RECORD- FINAL JUDGMENT.—The time in which an appeal may be taken is one year from date of the final Judgment. Where Judgment was rendered and a motion for a new trial overruled, and subquently a motion was made to strike out part of the original complaint, which motion was not decided for about two years, the decision of this motion is not a final Judgment. The limitation for appeal commence to run when the motion for a new trial was overruled.—*Joyce* v. *Dickey.*—Filed Nov. 18, 1885.—Ind.

APPEAL FROM JUSTICES COURT—JURISDICTION OF SUPERIOR COURT.—In taking an appeal from a justices court it is necessary to serve and file the notice of appeal. It is not material as to the order, in point of time, in which these acts are done. If done within the prescribed time the superior court has jurisdiction.—*Hall* v. *Sup. Ct. El Dorado Co*—Filed Nov. 19, 1885.—Cal.

ASSAULT—ACTION FOR INJURIES—MEASURE OF DAMAGES.—Exemplary damages cannot be recovered for an indecent assault but compensatory damages may be awarded for all injuries arising therefrom. Excessive damages is no ground for a new trial unless it clearly appears that the jury were corrupted or were laboring under a mistake or were some way misled. — *Wolf* v. *Trinkle.* — Filed Oct. 29, 1885.—Ind.

ASSUMPTION OF MORTGAGE—PURCHASING SUBJECT TO A MORTGAGE.—In purchasing land if the purchaser assumes the mortgage lien on the land he is personally liable for that debt. If it is recited in the deed that he buys subject to the mortgagee the mortgage must look to the land alone for the debt and not to the purchaser. Where land is sold on a judgment prior to the mortgage the owner cannot extinguish the mortgage lien by purchasing the land so sold.—*Hancock* v. *Fleming.*—Filed Nov. 19, 1885.—Ind.

ATTACHMENT OF RAILROAD CARS—SPECIAL STATUTE GOVERNS.—A deputy sheriff having in hand a writ of attachment made demand upon the president of the company for personal property sufficient to satisfy the writ. His demand not being complied with he served the writ upon the conductor of a train and demanded that one certain car be set out on the side track, which the conductor agree to do. He neglected to do so, and after running the train to the end of the road the car thus attached by the sheriff is siezed by a constable on another claim and put in charge of a custodian until sold. In an action it is *held* that the levy made by the sheriff was valid and made as prescribed by statute.—*Hall* v. *Carney.*—Filed Oct. 6, 1885. — Mass.

BAILMENT FOR HIRE—USED FOR A DIFFERENT PURPOSE—LIABILITY OF BAILEE.—Where a party hired horses to draw logs and used them in drawing hay and while so using them in crossing a river the horses are drowned. *Held* that the bailee is liable for their value. —*De Voin* v. *Mich. Lumber Co.*—Filed Dec. 1, 1885.—Wis.

BANKS—BONDS DEPOSITED FOR SAFE KEEPING—FRAUDULENT DISPOSITION OF THE BONDS—STATUTE OF LIMITATIONS.—Where a bank has received bonds for safe keeping, and an officer of the bank wrongfully uses them as collateral and conceals the facts from the owner from time to time, the bank is liable and cannot plead the statute of limi-

tations in an action to recover for the bonds —*Hughes* v. *1st National Bank.*—Filed Oct. 19, 1885.—Pa.

BASTARDY—BAIL FOR APPEARANCE OF DEFENDANT—ADJOURMENT.—Where a defendant has given bail for his appearance on a charge of bastardy and on the day of trial the hearing is commenced and afterwards adjourned to a day later the bond holds good for his appearance on the adjourned day. *Queary*, if before the trial was commenced the case had been postponed to a future day would the undertaking be held good?—*People* v. *Millham.*—Filed Oct. 30, 1885.—N. Y.

BILLS AND NOTES—WHEN A PROMISE WILL BE IMPLIED WITHOUT WORDS OF PROMISE.—Where a certain method has been pursued for a time in making drafts and remittances in part for the accommodation of each other until such arrangement is revoked there will be an implied acceptance of drafts made in the usual way and the drawee cannot plead that there was no authority to make the draft.—*Buiz* v. *Renauld.*—Filed Oct. 30, 1885.—N. Y.

BILLS AND NOTES—ACTION ON BY PAYEE AGAINST ACCEPTOR—CONSIDERATION. — In an action by the payee against the acceptor of a bill which was accepted after it came into the hands of the payee, the acceptor cannot effectively plead want of consideration proceeding from the drawer. An accepted bill in the hands of the payee is held free from any set-off by the acceptor the same as a note in the hands of an endorsee.—*Atkin* v. *Owens.*—Filed Oct. 23, 1885.—Mass.

BILL OF SALE—DESCRIPTION—SUFFICIENCY OF.—Where a party sold his property and gave a bill of sale in which the property was described as follows: "All my entire possessions at Grand Rapids, including the certain household furniture and paraphrenalia thereunto belonging to said house." *Held* not to include a stock of liquors on hand.—*McAlpine* v. *Foley.*—Filed Nov. 14, 1885.—Minn.

BOARD OF HEALTH—POWERS OF IN RESTRAINING CONTAGIOUS DISEASES—A Board of Health has power to place a house and its occupants under stringest requlation, where there is a contagious disease, but it has no right to take absolute possession of the house as against the possession of the party occupying and in possession of the same.—*Brown* v. *Murdock.*—Filed Nov. 7, 1885.—Mass.

BOND—ACTION ON NOTES UNPAID.—In an action brought on a bond which plaintiff has purchased and given his note in payment therefor, it is immaterial whether his note thus given has been paid or not.—*Tillinghast* v. *Phillips.*—Filed Oct. 17, 1885.—R. I.

BRIDGES—OUT OF REPAIR—LIABILITY OF TOWN.—Where a personal injury has occurred by reason of bad condition of a bridge, in an action for damages it is competent to show the bad condition of the bridge, in other places besides the particular place where the accident occurred. A party goiug upon guilty of a bridge which is in bad condition is not ontributory negligence *per se*—*Spearbracker* v. *Town of Larrabee.*—Filed Dec. 1, 1885—Wis.

BRIDGES--NEGLIGENCE IN NOT KEEPING IN REPAIR.—Where the town and county are jointly bound to keep a bridge in repair, althought the town has been accustomed to care for and keep the bridge in repair and collect from the county the part of expense due from it, yet in case of personal injury caused by bad condition of the bridge an action lie against the county, and if the county does not plead in abatement the mon joinder of the town the county alone will be liable for the damage assessed.—*Lyman* v. *Hamsphire Co.*—Filed Nov. 1885.—Mass.

BURDEN OF PROOF—RIGHT TO OPEN AND CLOSE.—The burden of proof rests on a party against whom judgment would be rendered if no evidence was given and such party has the right to present the opening and closing

argument. — *Osborne* v. *Rline.* — Filed October. 29, 1885.—Neb.

CARRIERS OF GOODS—RAILROAD COMPANY USING CARS OF ANOTHER COMPANY—IMPERFECT CONDITION OF CARS.—A railroad company using cars belonging to another company is guilty of negligence in failing to have the cars properly inspected before using them. An employe injured by reason of a defect in a car which should have been detected by the inspector, but was not, may recover damages, for the injury. In considering the question of due care in inspection of cars where the inspector is called as a witness the jury may take into consideration his general appearance and intelligence as to whether he was competent to act as inspecter or not.—*Keith* v. *N. H. & N. R. Co.*—Filed Oct. 24, 1885.—Mass.

CHATTEL MORTGAGE—MORTGAGOR TO USE AND DISPOSE OF PROPERTY.—A chattel mortgage whereby the mortgagee is permitted to use and dispose of the mortgaged property does not give the mortgagor a lien on the property as against an attaching creditor.—*Anderson* v. *Patterson.*—Filed Dec. 1, 1885. Wis.

CIRCUMSTANTIAL EVIDENCE—NEGLIGENCE—QUESTION FOR JURY.—In an action for damages as the consequence of negligence where it is sought to establish the matter of negligence by circumstantial evidence the jury must determine the sufficiency and force of the evidence.—*McDermott* v. *S. F. & N. P. Ry. Co.*—Filed Nov. 21, 1885.—Cal.

CIVIL SERVICE—LEGISLATIVE INJUNCTION AGAINST REMOVAL OF CITY OFFICERS WITHOUT CAUSE.—The legislature has constitutional authority to pass an act prohibiting the removal of officers in the police department of cities for political reasons and may prescribe the reasons for which removals may be made.— *Fitzgerald* v. *Mayor of Brunswick.*—Filed Vov. 19, 1885.—N. J.

CLOUD ON TITLE—PURCHASER NOT BOUND TO ACCEPT—MARKETABLE TITLE.—Where a purchaser at partition sale refused to complete the purchase because of a cloud on the title, in an action to compel him to do so, it is *held* that a purchaser at Judicial sale is entitled to a marketable title and the court cannot perfect the title by passing upon a disputed quesiton of fact.—*Fleming* v. *Burnham.*—Filed Oct. 6, 1885.—N. Y.

CLOUD ON TITLE—TAX CERTIFICATE—PURCHASED BY OWNER OF LAND.—A Tax deed, although it may be invali, dis a cloud on the title to the land it covers, and where the owner of the land purchases the right under the tax deed however worthless it may be in fact it is sufficient consideration to support the promise to pay for it.—*Stoddard* v. *Prescott.*—Filed Nov. 19, 1885.—Mich.

COMMON CARRIER—ACTION FOR LOSS OF GOODS IN TRANSIT MUST BE RROUGHT BY CONSIGNEE.—In an action against a carrier for loss of goods, in transit, if brought by the shipper he must show affirmatively that he is the owner of the goods. The right of action is in the consignee and the exception to this general rule must be affirmatively pleaded.—*Pennsyllvania Co.* v. *Poor.*—Filed Nov. 19, 1885.—Ind.

COMMON CARRIER—LIMITING THEIR LIABILITY BY AGREEMENT WITH THE SHIPPER.—Where a railway company in receiving horses for transportation make an agreement with the shipper that, in case of injury he shall give notice to the company of claim for damages, before the horses are removed from the place to which they are shipped or before they are mingled with other horses, and that such notsce shall be a condition precedent to his recovery. *Held* that such an agreement was equitable and would be enforced.—*Sprague* v. *M. P. Ry. Co.*—Filed Nov. 7, 1885.—Kans-

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CONTRACT—SIGNED BY ONLY ONE OF THE PARTIES—ACCEPTANCE BY THE OTHER PARTY.

—Where certain parties entered into a contract with a railroad company to pay a given some in aid of the construction of the road, and the railroad company have performed their part of the contract, the other party cannot be heard to invoke the doctrine of *Ultra Vires* as a defendence to the performance of their part. A contract signed by only one, but accepted by the other party becomes binding.—*C. &A. Ry. Co.* v. *Derkes*—Filed Nov. 6, 1885.—Ill.

CONTEMPT—FALSE AFFIDAVIT IN JUSTIFYING IN AN UNDERTAKING—JUDGEMENT NOT ENFORCEABLE.—In an affidavit in justifiying in an undertaking where a party does not include judgements against him which are not enforceable, or judgements which he considered secured by lien on his stock is not thereby guilty of fraud.—*Nathans* v. *Hope.*—Filed Oct. 13, 1885.—N. Y.

CONVEYANCE OF LAND FOR A SPECIAL USE—UPON FAILURE OF THE USE TITLE REVERTS.—Lands conveyed for a special use reverts to the grantor upon failure of the use and the terms on which the grant was made cannot be altered. Land donated for a church and cemetery upon failure of the church society may be retained for a burying ground.—*Appeal of Gumbert.*—Filed Oct. 26, 1885.—Pa.

CONSTRUCTION OF CONTRACT FOR SALE OF LAND—EQUITY DISREGARDS THE FORM—Where a transaction concerning land expressed in writing is in the form of a mortgage, but in reality amounts to a conveyance of the land, a court of equity will go behind the form of the instrument and construe it according to its true intent.—*St. P. & C. Ry. Co.* v. *McDonald*—Filed Oct. 15, 1885.—Minn,

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CONTRACT WITH INFANT NOT LIABLE.—PRIVILEGE OF INFANT PERSONAL.—Infancy as to a contract is a personal privilege. A person making a contract with an infant, through the father of the infant, who acts as agent, cannot hold the father liable on the contract where the fact of agency was known at the time of making the contract.—*Peterson* v. *Lippincott.*—Filed Nov. 17, 1885.—N. J.

CONTINUANCE–MOTION FOR SUPPORTED BY AFFIDAVIT OF DEFENDANT—SUFFICIENCY OF.—Upon a motion for continuance by defendant, in a criminal action, on the ground of the absence of material witnesses, and where he alleges that he caused a subpoena to issue for said absent wittness resident in the county six days before the commencement of said term, and five days before the commencement of term caused the second subpoena to issue, and on the day the court convenes he caused another subpoena to issue for said absent witness. *Held* that the defendant had exercised due dilligence and was entitled to a continuance.—*State* v. *Burwell.*—Filed Nov, 7, 1885.—Kans.

CONTRACT—SALE OF LAND ON VERBAL CONTRACT — STATUTE OF FRVUDS—PART PAYMENT.—Where land has been sold on verbal contract, and the vendee has made part payment, and has been in possession for many years, this will take it out of the statute of frauds and specific performance may be enforced.—*Winchell* v. *Winchell.*—Filed Oct. 6, 1885.—N. Y.

CONTRACT—SEPARATED PARTS OF—SEVERABLE OR ENTIRE, HOW DETERMINED.—Where a contract consists of independent parts, a failure to perform one of the parts does not give the other party a right to rescind the whole. Whether a contract is severable or entire must be determined by the consideration and is a question for the jury.—*Rugg* v. *Moore.*—Filed Oct. 5, '85—Pa.

CONTRACT—CREDIT GIVEN ON FALSE REPRESENTATION—ATTACHMENT.—Where goods are sold to one who represents himself as solvent and notes are given in payment upon discovery of fraudulent representations upon which the goods were sold, an action may

be maintained on the notes before their maturity.—*Shock* v. *Loucheim.*—Filed Oct. 19, 1885.—Pa.

CONDEMNATION OF LANDS FOR RIGHT OF WAY—MEASURE OF DAMAGES.—In assessing damages for land taken by a railroad company the true measure of compensation is the market value of the land as affected by the actual disadvantages and should be the actual balance between the advantages and disadvantages.—*P. B. & B. Ry. Co.* v. *McCloskey.*—Filed Nov. 9, 1885.—Pa.

CORPORATION—MORTGAGE TO SECURE BOND HOLDERS—DIVERSION OF THE MORTGAGE TO ANOTHER PURPOSE.—Where the directors of a corporation were authorized to mortgage the property of the corporation for the purpose of borrowing money, and instead they execute mortgage in payment of lands and fixtures for carrying on the business of the company. *Held* that this did not constitute a diversion from the intended purpose such as to void the mortgage.—*Davidson* v. *West Chester Gas-Light Co.*—Filed Oct. 6, 1885.—N. Y.

CORPORATION—POWER TO MORTGAGE ITS PROPERTY—POWER TO MORTGAGE ITS FRANCHISES.—A manufacturing corporation organized under the act of 1848 has power to mortgage its property to secure a debt, the same as a natural person, but to mortgage its franchises the prescribed consent of the stockholders must be obtained.—*Lord* v. *Yonkers Ful Gas Co.*—Filed Oct. 1885.—N. Y.

CORPORATIONS—RIGHTS OF PREFERRED STOCKHOLDERS—NET EARNINGS.—Where a corporation pledges itself not to commence work of construction until all the stock is subscribed, this does not estop it from incurring debt prior to the subscription of all the stock. Net earnings means the gross earnings less all currant expenses, the interest on bonded debt and a proper amount set apart for a sinking fund.—*B. & M. L. R. Co.* v. *Belfast.*—Filed Aug. 16, 1885.—Me.

COUNTY BOARD OF SUPERVISORS—LIABILITY FOR SERVICES.—MANDAMUS.—Where the board of supervisors of a county have employed parties in the care of county instutions *mandamus* will lie to compel payment for such service—*Elliot* v. *Kalkaska Co. Bd.*—Filed Nov. 18, 1885.—Mich.

COUNTY BOARDS—DISCRETIONARY POWER—ADVERTISING FOR BIDS.—In advertising for bids for the construction of a bridge it is sufficient if they advertise in one paper for the required length of time. In the selection of a paper, in which to advertise, their choice is a discretionary matter and a court will not reverse the action of the board in the exercise of a discretionary power.—*Brown* v. *Kramer.*—Filed Oct. 28, 1885—Neb.

CREDITORS BILL—FOREIGN ATTACMENTS—CONCURRDNT REMEDIES.—The fact that a creditor may avail himself of proceedings in foreign attachment for the collection of a debt is no bar to his procedings by creditor's bill. A creditor's bill must show that all ordinary legal remedies have been exhausted, othervise a demurrer to the bill will be sustained.—*Baxter* v. *Moses.*—Filed Aug. 16, 1885.—Me.

CRIMINAL LAW—FVIDENCE—*Res Gestae.*—In a trial on an indictment for murder by shooting, an eye witness of the affray testified to the situation of the parties and their appearance at the moment of the shooting, but was not permitted to state the words spoken by the defendant at the time. *Held* error. The words spoken at the time are a part of the *res gestae* and should have been admitted.—*State* v. *Walker.*—Filed Aug. 31, 1885.—Me.

CRIMINAL LAW—SPECIAL GRAND JURY—PRIVILEGE OF WITNESS.—Where a special grand jury is impasnnelled whilst the regulra grand jury is in session and an indictment is

found by it the indictment will be presumed to be regular. A witness is privlleged to refuse to answer if his answer would tend to criminate him, but if he elects to testifiy he must tell the truth. Where he might have refused to answer, if he elects to testify and answers falsely he is guilty of perjury.—*Makin* v. *People.*—Filed Nov. 14, 1885.—Ill.

CRIMINAL LAW—ACTION IN THE NAME OF CITY INSTEAD OF STATE.—In an action in a justice's court, for violation of a city ordinance, where the case is entitled in the name of city when it should be in the name of the state, and where the proceedings show clearly the character of the cbarge, such irregularity will not void the proceedings. — *Faribault* v. *Wilson.* — Filed Nov. 14, 1885.—Minn.

CRIMINAL LAW—IRREGULAR DRAWING OF GRAND JURY.—No grand jury need be called except upon order of the court but when empannelled it must be done according to statute. Where a grand jury was hastily summoned from by-standers and an indictment fonnd by it. *Held* invalid and may be taken advantage of by plea in abatement.—*Jones* v. *State.*—Filed Nov. 10, 1885.—Neb.

CRIMINAL LAW—MALICIOUS TRESPASS—TRIAL OF—QUESTION OF TITLE.—In an action for malicious trespass to real property the title to thc property must be in the person named in the indictment and must be so shown of proof. The question of title cannot be tried in such a prosecution.—*Hughes* v. *State.*—Filed Oct. 28, 1885.—Ind.

CRIMINAL LAW—RAPE — WHAT CONSTITUTES THE CRIME.—To constitute the crime of rape it must be committed forcibly and against the will of the victim, and there must be a penetration. An instruction that after taking into consideration all the circumstances the jury must be satisfied beyond a reasonable doubt of the guilt of defendant is not error.—*Osgord* v. *State.*—Flled Dec. 1, 1885.—Wis.

CROSS EXAMINATION—BREACH OF CONTRACT—CONTRACT NOT IN EVIDENCE.—In an action upon a contract where the contract is not in evidence, the plaintiff may be cross-examined to show the impossibility of executing the contract. The measure of damages are the actual damages sustained and no speculative damages can be recovered.—*Fetrie* v. *Lane.*—Filed Nov. 18, 1885. —Mich.

DEED—PAROL EVIDENCE— INTERPRETATION OF A WRITTEN INSTRUMENT.—An allegation that a deed does not include certain lands claimed under it does not affect the admissibility of the deed in evidence. To prove that the deed does not include certain lands goes only to the effect of the deed. Parol evidence cannot be admitted to vary the meaning of a written instrument.—*Dont* v, *Bird,*—Filed Nov. 19, 1885.—Cal.

DECEDENTS ESTATE—CLAIMS AGAINST—EFFECT OF ALLOWANCE. — Valid claims against the estate of a decedent are such only as might have been enforced against him in his lifetime by personal action. When a claim has been presented and allowed it will be presumed that the evidence in support of it was satisfactory to the administrator and judge of the court.—*In Re Estate* of *Swain.*—Filed Nov. F2, 1885.

DECLARATION OF A TRUST—WIFE CANNOT DECLARE A TRUST IN LANDS UNLESS HUSBAND JOIN.—A married woman cannot create or declare a trust in lands unless her husband joins in the deed. The failure or refusal to execute a contract which is void under the statute of frauds is no sufficient ground on which to base a bill for enforcement of constructive trust.—*Tage* v. *Tage*—Filed Nov. 21, 1886.—Minn.

DIVORCE — ALIMONY — DOWER, WHEN BARRED.—A wife who obtains a divorce on the ground of misconduct of the husband is entitled to dower in his estate but if the court awards her alimony it will be deemed

to be in bar of dower unless a contrary intent appears in the decree.—*Tatro* v. *Tatro.* —Filed Nov. 10, 1885.—Neb.

DEVISEE HOLDING PROPERTY IN TRUST FOR HIMSELF AND OTHERS—PROCEEDINGS BY CRIDITOR'S BILL.—Where a party, a devisee, holds property in trust for himself and others, his interest cannot be reached by a creditor's bill filed by a judgment creditor.—*Cummings* v. *Corey*—Filed Nov. 19, 1885. — Mich.

DISSOLUTION OF PARTNERSHIP—NO TIME FIXED BY AGREEMENT.—Where a partnership is formed and no limitation is fixed in articles of co-partnership, either partner may at any time terminate the partnership relations.—*Walker* v. *Whipple.*—Filed Nov. 19, 1885. — Mich.

EMBEZZLEMENT—WHAT CONSTITUTES.—False entries by a town treasurer, in the books and the payment of notes after expiration of his term, out of his own funds, does not constitute embezzlement. To sustain the charge the owner must be deprived of the property embezzled.—*Commonwealth* v. *Este*—Filed Oct. 21, 1885—Mass.

ESTATE OF INHERITANCE—RESERVATION OF AN EASMENT "TO MYSELF."—In an action *quare clausum* the defendant claimed the right of way over plaintiff's lot under a clause in the deed as follows "Reserving, however to myself the privelege of a bridle road in front of the house." *Held* that the reservation having in it no words of inheritance conveyed only a life estate in the easment so reserved.—*Bean* v. *French.*—Filed Dec. 1884.—Mass.

EXECUTION — EXEMPTION — PURCHASE MONEY FOR SALE OF PERSONAL PROPERTY.—Personal property levied upon in an execution on a judgment for the purchase money of the property in question is not exempt as under the law applying to debt on contracts in general.—*Rogers* v. *Brackett.* — Filed Nov. 23, 1885.—Minn.

EXECUTION—GOODS HELD IN PLEDGE—INTERPLEADER.—A sheriff's prayer for interpleader on a claim of qualified property in the subject matter of an execution cannot be maintained by proof of absolute property. Goods held in pledge as security for a debt may be seized and sold on execution against the pledgor, subject to the rights of the pledgee.—*Waverly C. C. Co. MeKenman.*—Filed Nov. 21, 1885.—Pa.

EXECUTION—RESALE—LIEN CREDITOR—Where a real estate is sold upon execution by the sheriff, and the execution creditor becomes the purchaser, and a creditor who has a mortgage lien on the property demands the proceeds, which is refused by the sheriff's grantee, the sale will be set aside and an *fi fa*, issued and the property resold for the benefit of the lien credttor.—*Fry* v. *Specht.* —Filed Octr 19, 1885.—Pa.

EVIDENCE—CLAIM AGAINST A DECEDENT'S ESTATE—WHEN CLAIM OUT MAY BE A WITNESS,—The party presenting a claim against a decedent's estate may testify to to any facts not shown to have been within the knowledge of the decedent.—*Cotherman* v. *Cotherman*—Filed Nov. 19, 1885.—Mich.

EX-POST FACTO LAWS—RETROACTIVE EFFECT—SUNDAY LAW.—An act passed in 1880 provided that any one who entered into a contracton sunday and received in whole or part of consideration should not be permitted to defend against liability on the plea that the contract was entered into on sunday and it was made applicable only to actions not then pending. *Held* that it applied to all contracts except those on which an action was then pending.—*Berry* v. *Clary.*—Filed Aug. 1885.—Me.

EXECUTION — SUPPLEMENTARY PROCEEDINGS IN AID OF.—Where not less than $50 remains due on an execution an order for

descovery by supplementary proceedings may be had. Notice of the order may be served on defendant wherever found, but an attachment to enforce the order cannot be served outside the jurisdiction of the court —*Seyfort & Edison.*—Filed Vov. 16, 1885. —N. J.

FIRE INSURANCE POLICY—WAIVER OF CONDITION—PAROL EVIDENCE TO SHOW A WAIVER.—In an insurance policy in which is a clause declaring the policy void if certain explosive or inflamable material is kept or used on the premises, and when the policy is written the underwriters knew that such explosive or inflamable material was necessarily used on the premises, such knowledge by the insurer is a waiver of the condition in the policy. Where the property insured includes a building and "Contents" parol evidence is admissible to show what the contents were.—*Wheeler* v. *Traders Ins. Co.* —Filed July 31, 1885.—N. H.

FIRE INSURANCE—CONDITION IN POLICY THAT IT IS VOID UNTIL THE PREMIUM IS ACTUALLY PAID.—Where a policy of insurance contains the clause that the policy is not in force until the premium is actually paid to the company or its authorized agent and where a policy has been issued and delivered through a broker and the broker has forwarded his check for the premium but while the check is in transit a loss occurs on the policy, the company is estopped from settling up the fact of non-payment of premium.—*Universal Fire Ins. Co.* v. *Block.*—Filed Oct. 5, 1885.—Pa.

FIRE INSURANCE—ELECTION TO PAY OR REPAIR—WOODEN STRUCTURE PROHIBITED BY CITY ORDINANCE.—A policy of insurance conditioned that in case of loss the insurer may elect to repair or pay in cash, any decisive act of the insurer mainfesting on election, such as delivering lumber and building material, or sending workmen and commencing work is conclusive evidence of an election to rebuild and repair. Where a frame structure has been destroyed, and the insurer elects to rebuild, and a city ordinance prohibits the erection of a frame buildiug, he is bound to erect a brick building of equal dimensions, instead of frame although at a greater cost.—*Fire Association* v. *Rosenthal* —Filed Oct. 5, 1885.—Pa.

FORECLOSURE—DISCONTINUANCE AND AN ACTION COMMENCED ON BOND.—Having commenced an action, foreclosure of a mortgage and proceeded to judgment which was in favor of plaintiff, before proceeding to sale dismisses the case commences an action on an agreement by which defendant, as it is claimed, was liable any deficiency not covered by the mortgaged property. *Held* that the proceedings in foreclosure was no bar to the latter action.—*Leob* v. *Willis.*—Filed Oct. 27, 1885.—N. Y.

FRAUDUDULENT CONVEYANCE OF PERSONAL PROPERTY—EMPYOMENT OF THE VENDOR AS CLERK.—To constitute a valid sale of personal property there must be an actual transfer of possession. When the property is in the hands of a bailee, no change of possession is necessary. The employment of the vendor as clerk by the vendee is not necessarily a badge of fraud.—*Steele* v. *Miller.*—Filed Oct. 26, 1885.—Pa.

FRADULENT CONVEYANCE— A FATHER STOCKING A FARM FOR HIS SON.—Where a father stocked a farm and put his son on it to enable him to make a living for himelf, a creditor of the son who sold him goods, without any knowledge of the ownership of the farm cannot seize the property of the father on an execution for the debt.—*Morgen* v. *Pierson.*—Filed Dec. 1, 1885.—Wis.

FRAUDULENT TRANSFER—SALE TO A RELATIVE.—The sale of property by a debtor in failing circumstances is cause for suspicion but although the sale be made to a relative it is not fraudulent *per se.* If made in good faith and for a good consideration it may be

upheld.—*Liminger* v. *Herron.*—Filed Nov. 25, 1885.—Neb.

FRAUDULENT CONVEYANCE—INTENT OF GRANTOR KNOWN TO GRANTEE.—Where property is conveyed in fraud of creditors and the fraudulent intent of the grantor is known to the grantee the deed is void as to existing creditors. Wnere the result of a conveyance is to place the grantor's property beyond the reach of his creditors fraud will be presumed.—*Crawford* v. *Beard.*—Filed Nov. 9, 1885.—Oregon

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FRAUDULENT CONVEYANCE—NOTICE—FILING APPEAL BOND.—Notice of a claim of a third party to the purchaser of personal property voids the sale where it is fraudulently made. The appellate court may extend the time for filing the appeal bond on an appeal from a justice of the peace.—*McKec* v. *Bassick Min. Co.*—Filed Oct. Term, 1885.—Col.

GENERAL ASSIGNMENT — SUPPLEMENTAL ORDER—REPORT OF REFEREE.—Where a referee is appointed under the general assignment act of 1878 the Judge has no right to require the referee to report his opinion. The Judge must name the witnesses to be called before the referee as to who should be called as witnesses and what book, or writing shall be produced. This is a matter in the discretion of the judge and he cannot delegate the power to the referee.—*In Re Assigment of Holbrock.*—Filed Oct. 6, 1885.—N. Y.

GIFT—MONEY DEPOSITED IN BANK FOR DONEE—WHEN THE GIFT IS PERFECTED.—Money deposited as a gift may be recalled by the donor before acceptance by the donee. Where the donor makes the deposit and holds the bank book for use of the donee, if the intention of the donor is clear the gift is perfected. Written communications by the donor to the bank concerning such deposit are competent evidence on the question of the inteution of the donor—*Scott* v. *Ford.*—Filed Oct. 23, 1885.—Mass.

GRAVEL-ROADS — STATUTE AUTHORIZING CONSTRUCTION OF—TAX FOR MAY BE COLLECTED.—Taxes assessed for the construction of gravel-roads may be collected and their collection may be enforced by sale of property the same as other taxes. Where an absolute title does not pass by the tax sale the purchaser has a lien on the property for all money paid with the statutory penalty which the owner must pay before he can redeem. — *Bothwell* v. *Millikin.* — Filed Oct. 28, 1885.—Ind.

GUARDIAN—PETITION FOR APPOINTMENT OF—JURISDICTION.— Where application is made to the superior court in any county for the appointment of a guardian it is no bar to the Jurisdiction of the court to set up the fact that a similar petition filed in another county has been heard and a guardian appointed. — *In Re Daumker, Minor.* — Filed Nov. 17, 1885.—Cal.

GARNISHEE—PERSONAL SERVICE.—Where a garnishee has been summoned to appear for examination service of such summons on the attorney of the garnishee is not sufficient. The service must be personal.—*Carter* v. *Koshland.*—Filed Nov. 17, 1885.—Oregon.

HIGHWAY IN BAD CONDITION—KNOWLEDGE OF DEFECT AS BEARING ON CONTRIBUTORY NEGLIGENCE.—Where there is a defect in a public highway and personal injury is caused thereby the fact that the party injured knew of the defect does not necessarily bar his recovery. It may be considered by the jury as bearing upon contributory negligence.—*Lowell* v. *Tp. of Watertown.* —Filed Nov. 19, 1885.—Mich.

HOMICIDE — WITHDRAWING EVIDENCE FROM JURY—GENERAL VERDICT.—Where in a trial for murder, the court instructs the jury that they should not consider evidence which tended to lower the grade of the crime it is *held* error. The verdict of jury must determine the degree of the crime or the

court cannot pronounce sentence.—*Parish* v. *State.*—Filed Nov. 25, 1885.—Neb.

HOMICIDE—EXPERT WITNESS—REFUSAL TO REPEAT INSTRUCTIONS ALREADY GIVEN.—Where a witness testifies that he has had experience which enables him to judge accurately as to how a wound was inflicted it is not error to receive his opinion as an expert. It is not error for the court to refuse to give instructions have beeh given substantially, already.—*People* v. *Sullivan.*—Filed Nov. 19, 1885.—Cal.

HOMICIDE—PLEA OF ONCE IN JEOPARDY.—Where one is charged with murder and a trial had and the information or indictment charged the crime as committed on a date subsequent to the trial and verdict the verdict is a mullity and will not justifiy the plea of once in jeopardy on a subsequent trial for same offense.—*People* v. *Larsen.* — Filed Nov. 19, 1885. — Cal.

HOMESTEAD—NOT SUBJECT TO ATTACHMENT FOR DEBT—EXEMPT IN HANDS OF GRANTEE.—Where lands are entered under the homestead law of the United States and the price paid such lands are not subject to attachment for a debt contracted prior to entry. Lands thus exempt, when conveyed to a purchaser continue exempt and the grantee may plead exemption.—*Baldwin* v. *Boyd.*—Filed Dec. 25, 1885.—Neb.

HOMESTEAD CLAIMANT—RIGHTS ADJUDICATED BY THE SECRETARY OF THE INTERIOR.—In a contest between two claimants to title to public land under the homestead law of the United States where the matter has been submitted to the secretary of the interior for decision the state courts have no right or jurisdiction to take cognizance of the action.—*Empey* v. *Plugert.*—Filed Dec. 1, 1885.—Wis.

HUSBAND AND WIFE—WHEN WIFE ENTITLED TO HER SEPARATE EARNINGS.—When a husband fails to provide for his wife through drunkeness or willful absence she is entitled to her own separate earnings. Testimony that the husband was dissipated got drunk several times each week and neglected his wife and that she in most part supported herself and family. *Held* sufficient to take case to the jury.—*Ellison* v. *Anderson.*—Filed Nov. 9, 1885.—Pa.

HUSBAND AND WIFE—INCOHATE RIGHT OF DOWER—A VESTED RIGHT, CONTINGENT.—The incohate right of dower is a vested right, yet it is not subject to sale and transfer by the wife during the life time of her husband. Where a widow executed a deed conveying her dower iuterest during the life time of her husband, in the settlement of her husband's estate after his death she is awarded her dower interest nothwithstanding her execution of the deed to her husbands son.—*Mason* v. *Mason.*—Filed Sept. 4, 1885.—Mass.

HUSBAND AND WIFE—SERVICES OF—ACTION BY HUSBAND IN HIS OWN NAME.—Where a husband and wife have been employed for certain service, the husband may maintain ad action in his own name for recovery of their wages.—*Sines* v. *Supt. of the Poor.*—Filed Nov. 19, 1885.—Mich.

ILLEGAL ASSESSMENT OF TAXES—RECOVERY OF, AFTER PAYMENT.—Taxes wrongfully and illegally assessed and collected may be recovered by an action at law, but the statute of limitations may be pleaded in defense. Where a demand must be made before right of action will acerue a party cannot take advantage of his own neglect to make it.—*Newson* v. *Board of Commissioners.* — Filed Nov. 4, 1885.—Ind.

ILLEGITIMACY — PROOF OF—BAPTISMAL RECORD.—In the distrubution of an estate the question of the illegimacy of the decedent was raised. In proof of illegitimacy was produced the certified record of his birth and baptism. *Held* that such certigcate was conclusive evidence.—*Appeal of Goerman*—

Filed Oct. 1885.—Pa.

INJUNCTION—DISCRETIONARY POWER OF PUBLIC OFFICERS—DEVISE TO A CHARITABLE USE.—An injunction to restrain the action of public officers will not lie against the exercise of a discretionary power. A devise to a charitable use although in the nature of a perpetuity is not denied by the statute against perpetuities.—*City of Richmond* v. *Davis.*—Filed Nov. 3, 1885.—Ind.

INJUNCTION—INVESTIGATION OF CAARGE AGAINST A MEMBER OF A PRODUCE EXCHANGE.—Where one member of the New York Produce Exchange preferred charges against another member and pending investigation an injunction is asked to restrain further proceedings. *Held* that where no injury is threatened and where litigation is pending on the question on which the petition for an injunction is founded the prayer will not be granted.—*Hurst* v. *N. Y. Produce Exchange.*—Filed Oct. 6, 1885.—N. Y.

INSANE PERSONS—JURISDICTION OF PROBATE COURT.—Where the probate court is petitioned for the appointment of a guardian and in the petition it is alleged that the person "is mentally incompetent and has been for some time," this is sufficient to give the court jurisdiction.—*Norton* v. *Sherman.*—Filed Nov. 19, 1885.—Mich.

INN-KEEPER—LIABILITY FOR PROPERTY OF GUEST STOLEN.—If a guest in an Inn complies with the rules prescribed as to security from theft or loss of goods the inn-keeper is responsible for property stolen. In an action against a guest for board the defendant may recoup or set off the value of any property thus lost in the inn.—*Burkank* v. *Chapin.*—Filed Sept. 21, 1885.—Mass.

INTEREST COUPON—MISTAKE IN AMOUNT—A BONA FIDE HOLDER.—Where an interest coupon, is separated from the bond, and calls for a larger sum than is actually due it devolves upon the holder to show that he acquired it for value in good faith without notice of the mistake otherwise he cannot recover.—*Goodwin* v. *City of Bath.*—Filed Aug. 6, 1885.—Me.

INTOXICATING LIQUORS—FILING AFFIDAVITS OF WITNESSES WITH THE INFORMATION.—Where the county attorney takes the statement of witnesses bearing upon the violation of the prohibitory law and files the same with the information such statements cannot be considered part of the information. Such dispositions do not invalidate the information.—*State* v. *Clark.*—Filed Nov. 7, 1885.—Kans.

JUDGMENT—SETTLEMENT WITHOUT NOTICE TO ATTORNEY OF RECORD, NOT BINDING.—Where the defendant's attorney procures a settlement with the plaintiff and satisfaction of a judgment obtained without notice to plaintiff's attorney the satisfaction of the judgment will be set aside. The attorney has a lien on the judgment for fees.—*Voell* v. *Kelly.*—Filed Dec. 1, 1885.—Wis.

LANDLORD AND TENANT—PREMISES IN BAD CONDITION—DEFENSE.—Where a landlord has falsely represented the sanitary condition of a dwelling house to be good, audin defense of a claim for rent the lessee sets up the fact of the false representation in an affidavit, if the affidavit is supported by evidence it is a good defense to the lease.—*Wolfe* v. *Arrott.*—Filed Oct. 5, 1885.—Pa.

LEASE AND CONTRACT OF PURCHASE—SPECIFIC PERFORMANCE.—Where one leased land with an agreement to purchase at the expiration of the term at a certain price specific performance of the contract may be enforced. An optional agreement upon, the electional of the lessor becomes binding and may be enforced.—*Herman* v. *Honcock Jr.*—Filed Nov. 3, 1885.—Ind.

LIBEL—RIGHTS OF COUNSEL AS TO OPENNING AND CLOSING—PLEADINGS IN CHARGE

OF JURY.—The Jury may be allowed to take pleadings to their room. In an action for slander without regard to the general rule as to the burden of proof, the plaintiff has the right to open and close the argument where the answer of defendant consists of an argumentative denial.—*Shulse* v. *Mc Williams.* —Filed Nov. 7, 1885.—Ind.

LICENSE TAX—ATTORNEY AT LAW SUBJECT TO.—Under the statute cities of the third class are authorized to impose a tax of $8 annually on attorneys who reside in, and practice law in the city. *Held* that where an attorney had an office in the city and practiced law in the city but resided outside, or elsewhere than in the city, the council could not enforce the payment of the license tax.—*Garden City* v. *Abbott.*—Filed Nov. 7, 1885.—Kans.

LEASE—CONTRACT TO PURCHASE AT EXPIRATION OF LEASE—Where land has been leased and the lessee enters into a contract to purchase the land at or before the expiration of the lease, if the grautor tenders a good and sufficient deed for the land before the expiration of the lease, he may enforce specified performance of the contract of purchase.—*Powell* v. *D. S. & G. Ry. Co.*—Filed Nove. 17, 1885.—Oregon.

LIEN OF JUDGMENT—LIMITATION AFTER THE DEATH OF DEFENDANT.—The limitation of a judgment lien on land is five years. If the defendant die during the existence of the lien, the limitation commences anew to run upon defendant's death and a *sci. fa.* issued within five years after the death of defendant and service had, will continue the lien against the terre-tenant.—*Stevenson* v. *Black* —Filed Oct. 19, 1885.—Pa.

LIFE INSURANCE—WARRANTY INCLUDED IN ANSWER TO QUESTIONS IN APPLICATION. —A party making application for life insurance, in answer to the question: "Have you ever undergone any surgical operation?" he answered "no." It appeared in evidence that he had been wounded in the army service, and had suffered, not a surgical operation but, remained in hospital for some time. *Held* that this did not void the policy.—*H. M. Life Ins. Ass'n* v. *Gillespie.* —Filed Oct. 5, 1885.—Pa.

LIFE-TENANT—WASTE—EXCAVATION FROM MINES ON THE ESTATE.—Where mines are open at the commencement of a life estate the life-tenant may work them and not be chargeable with waste. A life-tenant is not liable to the reversioner for waste in cutting and removing dead or decaying timber, or for cutting and removing live timber if it is in the way of cultivation of the land.—*Sayers* v. *Hoskinson and Wife.* — Filed Oct. 19, 1885.—Pa.

MALICIOUS PROSECUTION—ONE PARTNER NOT LIABLE FOR FALSE ARREST CAUSED BY CO-PARTNER.—A creditor who approves of an arrest made by one in his behalf is liable. Where one partner causes the arrest of a debtor wrongfully and his co.partner has no part in the matter by counsel or advice and does not participate in any benefits arising therefrom, the partner causing the arrest alone is liable for damages.—*Rosenkranz* v. *Barker.*—Filed Nov. 14, 1885.—Ill.

MALPRACTICE—SURVIVAL OF CAUSE OF ACTION—OPINION OF EXPERTS—An action for damages for medical malpractice does not survive the death of the physician. In an action commenced against two defendants jointly and it having abated as to one of them verdict being returned against them jointly it is error to render judgment against both. A hyprothetical question may contain statements made by defendant to the patient during treatment.—*Boor. Adm'r* v. *Lowery.*—Filed Nov. 4, 1885.—Ind.

MASTER AND SERVANT—FELLOW SERVANT —WHO ARE FELLOW SERVANTS.—The general manager, the train dispatcher and the

head brakeman on a freight train are not fellow servants with laborers, in the employ of a railroad company. The train men running a train belonging to one road over the track of another road are not fellow servants with the employes of the latter road.—*Phillips Adm'r* v. *C. M. & St. P. Ry. Co.*—Filed Dec. 1, 1885.—Wis.

MALICIOUS PROSECUITON—WHEN AN ACTION WILL LIE.—An action for malicious prosection cannot be maintained if commenced before the criminal action on which it is based is ended. A criminal action is not terminated until a *nolle prosequi* is entered, or a verdict of guilty is rendered, or the defendant discharged.—*Lowe* v. *Wartman.*—Filed Nov. 5, 1885.—N. J.

MALICIOUS PROSECUTION — DEFENSE—EVIDENCE OF A MISTAKE IN THE CRIME CHARGED.—In an action for malicious prosecution where by mistake a different crime was charged from what was intended, the defendant may prove that the crime which he intended to charge was true, and he may also show the bad character of plaintiff in mitigation of damages.—*O'Brien* v *Frasier.*—Filed Nev. 5, 1885.—N. J.

MARRIED WOMEN—RIGHT TO CONTRACT AND BIND THEIR SEPARATE PROPERTY.—A married women who contracts for goode for wearing apparrel and gives her own note for the same thereby binds her own estate in payment of the same and not that of her husband. The pliantiff must show in such action that the contract is one which a married woman has power to make.—*Arniold* v. *Engleiman.*—Filed Nov. 6, 1885.—Ind.

MECHANICS LIEN — WHEN A MATERIAL MAN MAY HAVE LIEN.—Where materials are sold to a man who represents himself as a contractor or architect the material man cannot have a lien for the materials furnished. In such case there is no privity between the material man and the owner.—*Brown* v. *Cowan.*—Filed Nov. 9, 1885.—Pa.

MORTGAGE—LEASEHOLD—FORECLOSURE—SURPLUS PROCEEDINGS.—Where property was sold by foreclosure of a mortgage the surplus was claimed by the owner, and also by the life tenant under a lease. *Held* that a life tenant is not entitled to the surplus unless it is shown that the life estate has suffered loss and failing to show the value of the life estate cannot recover.—*Larkin* v. *Misland.*—Filed Oct. 27, 1885.—N. Y.

MORTGAGE — RECORD — CONSTRECTIVE NOTICE TO A SECONE MORTGAGEE.—A party having executed a mortgage on certain property subsequently executes a second mortgage on the same property without reciting the first mortgage. The second mortgagee has notice of the first mortgage although it has not been recorded. The second mortgage is placed on record and assigned to a third party, who has no notice of the first mortgage. *Held* that the second mortgage takes precedence of the first in the hands of an innocent holder.—*Morse* v. *Curtis*—Filed Sept. 7, 1885.—Mass.

MORTGAGE—FORECLOSURE—NOTICE OF SALE OF WIFE'S INTEREST.—Where a mortgage has been executed by a husband and wife, not upon homestead property, perty, in proceedings of foreclosure it is not necessary that in the notice of sale it shall be stated that the wife's interest will be sold. —*Yale* v. *Steveuson.*—Filed Nov. 19, 1885—Mich.

MORTGAGE—NO PERSONAL LIABILITY—MORGAGED PREMISES ALONE LIABLE.—A mortgage gives the mortgagee no right to look to the mortgagor personally for the debt unless there is a contract to that effect and the remedy of the mortgagee is confined to the land on which the mortgage is a lien.—*Baum* v. *Tomkin.*—Filed Nov. 9, 1885.—Pa.

MORTGAGE CONDITIONED FOR THE LIFE SUPPORT—SUBORDINATION OF SECOND MORT-

GAGE.—Where land is mortgaged conditioned for the support of one for their natural life and a second mortgage is executed on the land for a specific sum the first mortgage is a valid lien on the land for such an amount as is fairly and in good faith agreed upon in liquidation of the mortgage.—*Savings Bank* v. *Holt.*—Filed Nov. 22, 1885,—Vt.

MORTGAGE—DOWER INTEREST—TAKING UP MORTGAGE AND MAKING A NEW ONE FOR SAME DEBT.—Upon foreclosure of a mortgage the wife of the morgagor has a right to demand that her dower interest be not sold until the hnsbands interest is exhausted. When a mortgage is taken up and cancelled and a new mortgage is executed for the same debt as the old the lien of the first mortgage is preserved.—*Powder.* v. *Ritzinger.*—Filed May 12, 1885.—Ind.

MORTGAGE—ASSIGNMENT OF. NEED NOT BE RECORDED,—An assignment of a mortgage is not a conveyance and need not be recorded to protect the rights of assignee. Where the fee is acquired by the mortgagee merger will not take place if against the interest of the mortgagee.—*Watson* v. *D. M. & T. Co,*—Filed Nov. 18, 1885.—Oregon.

MUNICIPAL CORPORATION — AUTHORIZED TO PLANT AND MAINTAIN SHADE TREES—LIABILITY FOR INJURY.—Where a city has authority to plant and preserve shade and ornamental trees in the streets it is liable for njury from the falling of limbs or branches of the trees. The owner of a lot cannot be held responsible for the trimming and care iof trees in front of his lot.—*Weller* v. *Mc Cormick.*—Filed Nov. 27, 1885.—N. J.

MUNICIPAL AUTHORITY—MAKING PUBLIC IMPROVEMENTS — CONCURRENCE OF BOARD OF FINANCE AND BOARD OF PUBLIC WORKS.—Where public improvements are contemplated in Jersey City it is necessary that the board of finance and board of public works unite in approving the work. If done by the board of finance alone and the bill subsequently approved by the board of public works it is not binding on the city.—*Kenuy* v. *Mayor of Jersey City.*—Filed Nov. 20, 1885.—N. J.

MUNICIPAL CGRPORATION—NO POWER TO ISSUE BONDS IN AID OF IMPROVING THE NATURAL WATERPOWER OF A RIVER.—The City of Ottawa having by charter the powers ordinairly granted to a municipal corporation proceeded to issue bonds in aid of a company organized to improve the waterpower of the Fox and Illinois rivers. *Held* that the City had no power to incur the debt. The bonds are not held by an innocent purchaser for value and that question is not raised.—*Mather* v. *City of Ottawa.*—Filed Nov. 14, 1885.—Ill.

MUNICIPAL CORPORATION — NOT LIABLE FOR NEGLIGENCE IN PERFORMING A PUBLIC DUTY.—Where a member of the fire department was injured by reason of an imperfection in a part of the apparatus used by the company, he seeks to recover damages for the injury from the city on the grounds of negligence in allowing the apparatus to be out of repair. *Held* that he cannot recover. —*Wild* v. *City of Paterson.*—Filed Nov. 5, 1885.—N. J.

NEGLIGENCE — FENCING RAILROADS — NEGLICT TO REPAIR.—Where a fence separating a railroad track from a pasture was found to be in bad repair, and the company ordered an employe to repair the same which he did not do as promptly as he might have done, and cattle were injured thereby. *Held* that the questien of negligence was for the jury—*Crosby* v. *D. G. H & M. Ry. Co.*—Filed Nov. 19, 1885.—Mich.

NEGLIGENCE—INJURY TO EMPLOYE—LIABILITY OF MASTER—BURDEN OF PROOF.—An employe who engages in any labor in which there is danger assumes the risk of injury incident to the work. A party employed in a building where there was an elevator and

the elevator shaft was unguarded, fell down the shaft and was injured. In an action against his employer for damages it is *held* that he could not recover because he knew of the existing unguarded condition of the elevator shaft. The burden of proof was on the plaintiff to show that he was exercising due care.—*Taylor* v. *Caren Mfg. Co.*—Filed Oct. 22, 1885.—Mass,

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NEGLIGENCE—RAILROAD COMPANY—ONE RAILROAD COMPANY GUARANTEEING THE BONDS OF ANOTHER — LIABILITY OF THE GUARANTOR.—Where one railroad company takes stock in another, or guarantees the bonds of another road being constructed, such company, the guarantor, is not liable for negligence of the other company, whose bonds it has guaranteed.—*A. T. & S. F. Ry. Co.* v. *Davis.*—Filed Nov. 1, 1885.—Kans.

NEGLIGENCE—EMPLOYMENT OF INTOXICATED MEN.—The hoisting machinery in the premises where plaintiff was employed was in charge of a man who was in some measure intoxicated. The plaintiff suffering an injury from the mismanagement of the machinery, brings an action for damages. *Held* that the question of contributory negligence was properly submitted to the jury, and that the fact of intoxication of the engineer was material.—*Probst* v. *Delamater.* Filed Oct. 30, 1885.—N. Y.

NEW TRIAL—ORDER FOR, MADE AND SUBSEQUENTLY REVOKED.—Where an order granting a new trial is made on conditions that the accrued costs be paid, and they are accordingly paid the order cannot be revoked. Two associate judges are competent, in the absence of the presiding judge to grant an order for a new trial.—*Reiber* v. *Boos.*—Filed Oct. 26, 1885.—Pa.

NOTICE OF LIEN FOR WAGES—WHAT FACTS MUST BE STATED IN THE NOTICE.—A notice served upon the sheriff of a pre fered claim for wages contained a statement of the amount due, and that the work was performed with six months last past, but did not state that the property subject to the lien was included in the property levied upon. *Held* that the notice was defective. —*Appeal of Adcmson.*—Filed Oct 19, '85—Pa.

NUISANCE—STREET RAILWAYS PERMITTING SNOW AND ICE TO ACCUMULATE—LIABILITY. —Street railway companies whose duty it is to keep snow and ice from accnmulating on the street are liable for the consequences of their neglect to do so and they are not relieved from liability by the fact that it is primarely the duty of the city to keep the streets in good repairs. It is not negligence *per se* for a passenger to get off the front platform of a street car when moving slowly. —*Dixon* v. *B. C. & N. R. Co.*—Filed Oct. 13, 1885.—N. Y.

NUISANCE—ERECTING ENGINE—ELECTRIC LIGHT MACHINERY.—A corporation obtained license from the city to erect a steam engine in a certain place in the city of Lowell. After erecting the engine they also erected machinery necessary to generate electricity for electric lights. This proving a nuisance to a dwelling in the vicinity an action is brought to abate the nuisance. *Held* that license to erect an engine did not include the right to erect machinery to be run by it.—*Quinn* v. *Lowell Elec. Light Co.* —Filed Sept. 4, 1885.—Mass.

OBJECTION TO RECEIVE ANY EVIDENCE—EQUIVALENT TO A DEMURRER.—Where the defendant objects to the reception of any evidence on the ground that the complaint does not state sufficient ground, for an action is equivalent to a demurrer *ore tenus* and the court must determine as to the sufficiency of the complaint.—*Doud* v. *W. P. & S. Ry. Co.*—Filed Dec. 1, 1885.—Wis.

PARTITION—POWER OF COURT TO ORDER RE-SALE — LIABILITY OF SURETY.— Where property is purchased at sale of the commis-

sioner and the purchaser fails to complete the purchase, the court may order a re-sale of the property and the proceeds applied towards cancelling the obligation of the surety on the first sale.—*Rout* v. *King*.—Filed Nov. 18, 1885.—Ind.

PARTNERSHIP—DEBT DUE THE FIRM BY DECEASED PARTNER.—A debt due a copartnership, from a deceased partner, may be recovered by the surviving partner in behalf of firm creditors. Such claim has no preference over other debts due creditors of the decedent.—*Bird* v. *Bird, Adm'x.*—Filed Nov. 16, 1885.—Me.

PARTNERSHIP — ASSIGNMENT — APPLICATION OF ASSETS.—Where an assignment has been made by a firm, upon the application of the assignee, the conveyance of real estate which has been deeded to one of the partners, but paid for with partnership funds, will be set aside.—*Smith* v. *Jones*.—Dec. 1, 1885.—Neb.

PAYMENT OF LABORERS — SIGNING THE PAY-ROLL—SUCH RECEIPT NOT CONCLUSIVE—Where laborers are being paid and each one is required to sign the pay-roll, such receipt is not conclusive against the party signing the same. A letter written by an attorney, offering a compromise of a claim for a given sum, cannot be admitted as evidence against the claimant, unless it be shown that he authorized the statement.—*Solomon Ry. Co.* v. *Jones*.—Filed Dec. 4, 1885.—Kan.

PLEADING IN ABATEMENT—PENDENCY OF ANOTHER SUIT—DIVORCE.—In an action for a divorce the defendant pleaded the pendency of another suit, in another county on the same grounds, in abatement of the action, but failing to state in the plea that the suit was still pending, the plea is held bad.

Where a husband has been absent nearly seven years, and his wife marries a second husband, after sixteen years, such marriage will be held valid in the absence of positive proof that the first husband was alive at the time of second marriage.—*Johnson.* v. *Johnson*.—Filed Nov. 14, 1885.—Ill.

PLEADING—REPUGNANT COUNTS — CONTRACT—Where the counts which are repugnant to each other are joined in the declaration, recovery may be had on one of them. A contract cannot be voided on the ground of false representation, unless the complainant relied upon the false representation.—*Berringer* v. *Biecher*.—Filed Nov. 19, 1885—Mich.

PLEADING—SINGLE COUNT— DEMURRER.—In an action against a druggist for doing business without being registered, the declaration must state definitely that he done business in the county a specified length of time. Where the declaration contains a single count, which is held bad on demurrer, the adjudictation is final.—*Plaisted* v. *Walker*.—Filed Aug. 6, 1885.—Me.

POWER OF TOWN COMMITTEE—ISSUE OF BONDS—NOTE GIVEN FOR BONDS AT THEIR MATURITY.—Where a township committee has lawfully issued bonds and upon maturity of the bonds they are taken up and a note given for their value, the town committee has power to order a tax levied for the payment of the note. It is within the power of a town committee to employ an attorney to defend an action against the township, but they cannot raise funds to pay fees in no way provided for by law.—*Water-works* v. *Smith*.—Filed Nov. 5, 1885.—N. J.

PRACTICE—AFFIDAVITS USED ON MOTION FOR NEW TRIAL MUST BE INDORSED BY THE JUDGE OR CLERK.—Affidavits used on motion for a new trial, will be stricken from the record on appeal unless they have been indorsed as being so used, by the judge or by the clerk of the court. It is a matter largely in the discretion of the judge whether he grant a new trial or not, and if he does not invade the province of the jury, the appellate court will not reverse the order.—*Albion Mining Co.* v. *Richmond Mining Co.*—Filed Nov. 9, 1885.—Nev.

PRACTICE—AMBIGUOUS COMPLAINT—MOTION TO DISMISS.—Where a complaint is indefinite, appropriate to either trespass or ejectment, and where the defendant moves to dismiss on the ground that the complaint is in ejectment and the averments show trespass, and again moves to dismiss on the ground that the complaint was in ejectment and the acts proven were trespass, he can not set up an appeal from a verdict in tres pass that there was no cause of action. In his mction he admits that trespass has been proven.—*Harrison* v. *B. B. & C. I. R. Co.* Filed Oct. 30, 1855.—N. Y.

PRACTICE — LANDLORD AND TENANT — JURISDICTION.—In proceedings by a landlord to recover possession of demised premises under the act of 1830, the terms for which the premises were leased must appear of record, otherwise the justice has no jurisdiction. The act does not apply to tenants for life or ground tenancies in fee.—*Leinbabn* v. *Kaufman.*—Filed Oct. 5, 1885.—Pa.

PREFERING LABORER'S WAGES IN AN ASSIGNMENT.— CONTRACTORS NOT LABORERS.—Plaintiffs had a contract with defendants to furnish planks, which defendants agreed to cut as ordered at the rate of $15 per thousand or $50 per month. In an assignment by the defendants they gave plaintiffs a preference, as provided by statute, for laborers. *Held* not valid.—*Lang* v. *Lang*—Filed Dec. 1, 1885.—Wis.

PRINCIPAL AND AGENT — TENANTS IN COMMON—BREACH OF CONTRACT.— Where two were tenants in common of certain lands, one agreed with the other to collect rents, pay taxes, etc., which he failed to do and the lands were sold because of the non-payment of taxes. *Held* that the one who had agreed to pay the taxes was the agent of the other co-tenant, and that he as agent was liable to his principal for all damages accruing from the breach of his contract.—*Tuers* v. *Tuers.*—Filed Oct. 13, 1885.—N. Y.

PROJECTING EVES—INJURY TO ADJOINING PROPERTY.—Where a party erects a building so that the roof projects over and throws the water upon the adjoining lot to the injury of the owner thereof, the owner may proceed in equity for relief from the injury. — *Willmarth* v. *Woodock.* — Filed Nov. 19, 1885.—Mich.

PRACTICE—AMENDING A CHARTER—APPEAL.—From a decision approving a charter no appeal will lie. In seeking to so amend a charter of a society so as to enable another society, called the supreme lodge, to participate in the making of by-laws, where the petition failed to show whether the supreme lodge was chartered or not and where it was located. *Held* that snch omission was fatal.—*In Re Grand Lodge A. O. U. W.*—Filed Nov. 9, 1885.—Pa

PRACTICE—JUDGE SIGNING PAPERS ON APPEAL AFTER HIS TERM OF OFFICE HAS EXPIRED.—A jury may be instructed to return a verdict on each separate count, or may return special verdict. Where an appeal is taken and the term of office of the judge who tried the case has expired, he is authorized to sign the papers in perfecting the appeal.—*Johnson* v. *Higgins.* — Filed Sept. 1885.—Conn.

PROMISSORY NOTE—SET OFF—RIGHT TO CONTEST TITLE OF SET-OFF CLAIMS.—Where one has obtained a promissory note for value, the maker of the note cannot off-set a note which he has acquired for that special purpose, agreeing to pay the holder one-half of all he can realize out of it by thus off-sctting it against his own note. Where an off-set is claimed it is competent to contest the claimant's title to the alleged off-set.—*Proctor* v. *Cole.*—Oct. 29, 1885.—Ind.

PROMIS NOTE—*Lex Loci*—ORAL NOTICE TO PURSUE DEBTOR. — Where goods were sold in West Virginia and delivered to the purchaser, at his house in Pennsylv ania, and a note executed there in payment for the goods, and the note signed by a surety, the law of Pennsylvania will govern as to

liability of the surety on the note.—*Tenant* v. *Tenant.*—Filed Nov. 2, 1885.—Pa.

PUBLIC OFFICERS — NOT INDIVIDUALLY LIABLE IN ACTING OFFICIALLY—AN ACTION MUST BE BROUGHT BY PARTY IN INTEREST.—Where certain powers were conferred by the egislature on a township, and in executing those powers the township committee exacted a bond of certain parties for the proper execution of the obligation they assumed, it is *held* that the township committee is the only party who can prosecute an action on the said bond. The municipal corporation of the township cannot brlng an action.—*Township of Woodbridge* v. *Hall.* —Filed Nov. 5, 1885.—N. J.

PUBLIC OFFICER—COMPELLING DELIVERY OF BOOKS TO SUCCESSOR—CERTIORARI.—In summary proceedings to compel the delivery of books by a public officer to his successor in office, the order of the commissioner is not subject to review, unless on the question of jurisdiction, or unlees it is in gross violation of the statute.—*Curran* v. *Norris.*—Filed Nov. 18, 1885.—Mich.

RAILROADS—NO STATUTORY OBLIGATION TO FENCE TRACK—INJURY TO STOCK.—Where the statute does not impose the duty upon the railroad company to fence their track, and an animal wanders upon a railroad bridge and is injured, without any fault of the company, the company is not liable for damages.—*D. & G. Ry. Co.* v. *Chandler* —Filed Oct. Term, 1885.—Col.

RAILROAD COMPANY—NOT LIABLE FOR INJURIES ARISING FROM CLOSE PROXIMITY OF TRACK TO HIGAWAY.—Where a railroad track runs parallel to, and in close proximity to a public highway, the company is not liable for injuries arising from the prudent running of their trains on such track, done to travellers on the highway.—*Lamb* v. *Old Colouy Ry. Co.*—Filed Sept. 3, 1885.—Mass.

REPLEVIN—DESCRIPTION OF THE PROPERTY.—The description of property to be seized, in a writ of replevin, is for the purpose of enabling the officer to identify the property. If the right property is seized, although the description be wrong, it is not a fatal variance.—*McCourt* v. *Bond.*—Filed Dec. 1, 1885.—Wis.

RIGHT TO ABANDON CONDEMNATION PROCEEDINGS—WHEN LOST.—When the land owner acquires a vested right to the compensation awarded for the condemnation of land, for right of way, the right to abandon the proceedings is lost. Where land has been condemned for depot, machine-shops and right of way, after the award the company may abandon all except the right of way for which a new award must be made. *D. & N. O. Ry. Co.* v. *Lamborn.*—Filed Oct. Term, 1885.—Col.

RETURN — SUFFICIENCY OF IN JUSTICE'S COURT.—The return on an execution, where no property is found, must show that som effort has been made to find property of defendant. A return in these words "No property found whereon to levy." *Held* insufficient.—*Mathows* v. *Miller.*—Filed Nov. 5, 1885.—N. J.

RESIDENCE OF CHILD 18 YEARS—TEMPORARY ABODE.—In an action to recover for supplies furnished a pauper, of 18 years of age, the question of her legal residence is the point in issue. The child has gone away from home to seek employment, intending to return to her father at the end of three years. *Held* that the girl was not emancipated, and that her legal residence remained with her father.—*Searsmont* v. *Thorndike.*—Filed Nov. 16, 1885.—Me.

RECOGNIZANCE.—IN JUSTICE'S COURT—OBLIGATION OF RECORD—FORFEITED BY IMPRISONMENT IN ANOTHER STATE.—A recognizance taken by a committing magistrate and transmitted to the district court becomes an obligation of record and imprisonment of the obligor in another state,whereby he is unable to appear, or by which his sureties

cannot produce him in court works a forfeiture of the recognizance.—*King State.*—Filed Nov. 10, 1885. Neb.

ROADWAYS.—NOTICE OF ASSESSMENT OF DAMAGES. In laying out a roadway it is necessary that notice be given the owner of the land through which the road is to pass, of the assessment of damages, but this notice need not appear of record. It may be established by oral proof. *In Re Poad in Plum Creek Tp.* Filed Oct. 26, 1885. Pa.

RECONVEYANCE—BOND FOR, EXECUTED THREE YEARS AFTER CONVEYANCE—NOT A DEFEASANCE. Where a grantee, three years after delivery to him of an absolute deed executes a bond for the reconveyance of the land, such bond does not constitute a defeasance. An agreement in a mortgage, limiting the time for redemption, will bind the mortgagee without his signature.—*Stone* v. *Merrill.*—Filed Dec. 7, 1885.—Me.

RAILROAD CROSSING—DUTY OF TRAVELERS—A traveller, on a highway, who crosses a railway track without looking and listening for approaching trains, is guilty of contributory negligence which will bar recovery for injuries received. The fact that a train is run at a greater speed than usual, is not of itself negligence.—*State* v. *Main Cent. Ry. Co.*—Filed Dec. 1, 1885.—Maine.

REPLEVIN—DESCRIPTION OF PROPERTY IN REPLEVIN BOND.—Where two animals were replevied on the same writ, and in the bond given, only one of the animals was referred to. *Held* that the bond was valid as to the one described and not the other.—*Eastmon* v. *Barnes.*—Filed Nov. 27, 1885.—Vt.

REDEMPTION OF LAND — MISTAKE BY CLERK OF COURT — Where a party in redeeming land, sold under foreclosure of a mortgage, pays the amount received as estimated by the clerk of the court, and it is subsequently found that the clerk made a mistake and did not demand the full amount, redemption may subsequently be completed by paying the proper amount—*Wakefield* v. *Botherham.*—Filed Dec. 10, 1885.—Ia.

REPLEVIN—ACTION MAY PROCEED WITHOUT BOND OF PLAINTIFF — VERDICT AND JUDGMENT.—In an action of replevin, which has proceeded to judgment, although the plaintiff has filed no bond, the judgment is valid. When the plaintiff recovers a money judgment, and not property, he is entitled to damages for the wrongful detention the same as if the judgment had been for the re-delivery of the property.—*Cooke* v. *Hamilton.*—Filed Dec. 8, 1885.—Ia.

RAILROADS—KILLING BRAKEMEN—FINDING OF JURY.—Where a brakeman gives a signal in proper manner to the engineer, and the signal is not obeyed, and in consequence the brakeman is killed, the company is liable for damages. An assessment of $2,500 *held* not excessive.—*Beems Adm'r.* v. *C.R.I & P. Ry. Co.*—Filed Dec. 10, 1885.—Ia.

RIGHT TO HOLD OFFICE—LIMITATION OF QUALIFICATIONS BY STATUTE. — Where the statute provides that no person but a qualified elector shall hold any office, by election or by appointment, in the state, such pro vision is reasonable and not in conflict with the constitution. A provision, in city charter, providing that its municipal legislature shall be the sole judge of the qualifications of its own members, makes the action of the council in such matters final.—*Darrow* v. *People.*—Filed Nov. 18, 1885.—Col.

RIGHTS OF MINING CLAIMANTS — SENIOR AND JUNIOR CLAIMS—CROSS VEINS.— In a senior and junior location of a mining claim, and the veins are "cross veins," the cross vein will be reserved from the prior grant, and also the right of way to work and mine the junior claim.—*Branagan* v. *Dulaney.*—Filed Nov. 13, 1885.—Col.

RE-MARRIAGE OF DIVORCED WIFE—MODIFICATION OF THE DECREE FOR ALIMONY.—

Where a divorced wife has obtained an order for alimony and subsequently re-marries a man abundantly able to support her, this is sufficient grounds on which to obtain an order modifying, or reducing, the amount of alimony.—*Olney* v. *Watts.*—Filed Nov. 18, 1885.—Ohio.

RAILWAYS—PERSONAL INJURY—DECEASED WITNESS—ADMISSION OF TESTIMONY TAKEN BY CORONER.—When death results from an accident, and the testimony of witnesses before the coroner is preserved, upon a trial subsequently in an action for damages, when a witness has died, his testimony before the coroner's jury is not admissible on the trial of the action for damages.—*P. C. & St. L. Ry.* v. *McGrath.*—Filed Nov. 18, 1885.—Ill.

RAILWAY COMPANIES — GRANT TO LAY TRACKS IN PUBLIC STREETS.—Railway companies are private corporations, but for public use, and by reason of the public interest in them, they have the right of eminent domain, and may take a grant to use public streets. Where a side-track is laid by an individual leading to a manufacturing establishment, although laid at his own expense, it is subject to the general use of the railway company and the public. He cannot acquire exclusive control of it.—*C. D. & C. Co.* v. *Garrity.*—Filed Vox. 14, 1885.—Ill.

RIGHT TO ABANDON—CONDEMNATION PROCEEDINGS—PAYMENT MUST PRECEDE ENTRY ON CONDEMNED PROPERTY—Where land is condemned under the law of eminent domain, payment must be made before the right of entry accrues, and until payment is made the condemnation proceedings may be abandoned.—*Schreiber* v. *C. & E. Ry. Co.*—Filed Nov 14, 1885.—Ill.

SALE OF PERSONAL PROPERTY—RAILROAD CARS.—Where a party purchased certain railroad cars and was tendered possession, but had no place to put them, he put his name upon the cars and gave notice, to certain parties interested of his purchase. *Held* that there was no transfer of possession and no transfer of title.—*Rafferty* v. *McKennan.* Filed Nov. 2, 1885.—Pa

SAVINGS BANK—PRESIDENT NOT AUTHORIZED TO BORROW MONEY.—The president of a savings bank borrowed money in the name and for the use of his bank and pledged bonds in possession of the bank as security. In an action to recover for the bonds it is *held*, that the president of the savings bank had no authority, by virtue of his office as president, to borrow money for the bank.—*5th Ward S. B.* v. *1st Nat. Bank.*—Filed Nov. 5th, 1885.—N. J.

SALE BY AN AGENT—PRINCIPAL NOT LIABLE ON A WARRANTY WHICH THE AGENT WAS NOT AUTHORIZED TO MAKE.—Where a party authorized an agent to sell a horse for a fixed sum, but did not authorize the agent to warrant the horse sound, and the agent did warrant the animal to be sound, the principal cannot be held on the warranty. An owner selling an animal, which he knows is not sound, is not bound to disclose the defects to the purchaser.—*Decker* v. *Frederick.*—Filed Nov. 5, 1885.—N. J.

SALE OF GOODS BY SAMPLE—BREACH OF WARRANTY—COUNTER CLAIM.—Where goods were sold on sample, and upon delivery were paid for and subsequently found to be damaged and not in condition as warranted, the same parties having purchase other goods subsequentiy and becoming indebted, refuse payment, and an action being brought against them for the debt, they off-set a claim for damages for breach of warranty in the delivery of damaged goods in a former sale. Their counter-claim was sustained and allowed. *Briggs* v. *Hittou.* Filed Oct. 6, 1885. N. Y.

SALE OF MINE—PART TO BE PAID OUT OF EARNINGS OF THE MINE.—Where a mine is purchased and part payment is made in cash, the balance to be paid out of the earning of the mine, and the purchaser consolidates the mine thus purchased with another mine, the balance unpaid becomes due and

payable at once.—*Linn* v. *Butler*.—Filed Oct. Tesm, 1885.—Col.

SATISFACTION OF CHATTEL MORTGAGE—ACCEPTANCE OF MONEY REALIZED FOR SALE OF PROPERTY.—When the property under chattel mortgage has been sold for its full value, and the mortgagee has knowledge of the facts, and he accepts the money received for the goods so sold, he is estopped from asserting his lien on the goods under the mortgage.—*Field* v. *Dorgan*.—Filed Dec. 1, 1885.—Wis.

SCHOOL DISTRICT—LEASE FOR THE PURPOSE OF ERECTING A HALL AS A SECOND STORY TO A SCHOOLHOUSE.—Where a school district authorizes a lease or a contract with parties to erect a second story on a school house for a hall, agreeing that said parties shall own and use the hall as long as the school house shall stand, and after 30 years use of the school house and hall, the district cannot sell and remove the school house under the hall. The owners of the hall have an absolute title to it.—*Peaks* v. *Cleteeu*.—Filed Nov. 16, 1885.—Me.

SEARCH WARRANT—DESCRIPTION OF PREMISES TO BE SEARCHED. In a search warrant the premises to be searched were described as "a certain building, the cellar under the same, and the out-buildings within the curtillage thereof situated," and the property was found and taken from a building on an adjoining lot, which was connected by a passageway. *Held* that the seizure was unlawful.—*Commonwealth* v. *Int. Liquors and Vessels*. Filed Sept. 1885. Mass.

SEARCH WARRANT—SUFFICIENCY OF DESCRIPTION OF PREMISES TO BE SEARCHED.—In a complaint and search warrant the officer was directed to search "the house and premises of Elias Dressel, of Granby in said county of Hampshire." *Held* that these words are equivalent to "the dwelling house of Elias Dressel," and refer to the house occupied by him as a homestead.—*Wright* v. *Dressel*.—Filed Oct. 22, 1885.—Mass.

SEDUCTION UNDER PROMISE OF MARRIAGE—SUFFIENCY OF EVIDENCE.—In an action for seduction, under promise of marriage, it is not necessary for plaintiff to show a contract or promise of marriage in any particular words. It is sufficient to show all words spoken or circumstances connected therewith, from which a promise may be inferred.—*State* v. *Brinkhaus*.—Filed Nov. 24, 1885.—Minn.

SIDEWALK CONTRACT—SUBSTANTIAL COMPLIANCE WITH THE SPECIFICATIONS.—Where in a contract for the construction of a sidewalk the specifications called for oak subsills, and the contractor put in pine, it is *held* that this was not a substantial compliance with the terms of the contract, and no recovery can be had on a *quantum meruit*.—*Denton* v. *City of Atchison*.—Filed Dec. 4, 1885.—Kans.

SLANDER — ALLEGED EMBEZZLEMENT — CONFLICTING TESTIMONY. — The adverse use or withholding of money is an essential ingredient of embezzlement, and where, on a trial for embezzlement, the testimony is conflicting, it is not error to refuse to charge that if defendant, as treasurer, refused to pay any draft made upon him iu proper manner, he is guilty of embezzlement.—*Chaplin* v. *Lee*.—Filed Nov. 25, 1885.—Neb.

SLIGHT AND GROSS NEGLIGENCE DEFINED—COMPARATIVE NEGLIGENCE.—A party can not assign for error a ruling made at his own instance. "Within the contemplation of that rule (comparative negligence) where one has observed ordinary care with reference to the particular circumstances involved for his personal safety, he has, even if slighly negligent, observed all the care the law requires of him; and where, having observed this care, he is injured by the negligence of another, that other has been guilty of the degree of negligence for which the law charges responsibility.—*Calumet I. & S. Co.* v. *Martin*.—Filed Nov. 21, 1885.—Ill.

SEDUCTION—EVIDENCE OF FAMILIARTY—CAPACITY OF DEFENDANT.—In an action for

seduction, evidence of unusual familiarity between plaintiff and defendant, may properly go to the jury. When plaintiff's testimony is in some way contradictory, it is proper for the jury to weigh it in the light of all surrounding circumstances.—*Watson* v. *Watson.*—Filed Nov. 19, 1885.—Mich.

SPECIFIC PERFORMANCE—DISSOLUTION OF PARTNERSHIP—EVIDENCE.—Where, in a dissolution of a partnership, it is agreed between the partners that the retiring partner shall retain his interest in the partnership property, pending the settlement of the business, and he conveys his interest to a third party to be held in trust until the agreement is fulfilled, specific performance of such agreement may be had.—*Whituey* v. *Burr.* Filed Nov. 14, 1885.—Ill.

SPECIAL ASSESSMENT—PROOF OF AUTHORITY TO MAKE ASSESSMENT.—To obtain a judgment confirming a special assessment the municipal authorities must prove the passage of the ordinauce authorizing it, which may be done by producing the journal of the city council, or by a certificate of the city clerk, or by a printed copy of city ordinances in authorized publication.—*Ltndsay* v. *City of Chicago.*—Filed Nov. 14,1885.—Ill.

SPECIFIC PERFORMANCE—TENDER OF PERFORMANCE.—One seeking specific performance of a contract must show or tender performance on his part, or the decree will not be made. A decree of specific performance is largely tn the discretion of the trial court, and will not be disturbed by an appellate court unless there is a clear abuse of the discretionary power.—*Cohu* v. *Mitchell.*—Filed Nov. 14, 1885.—Ill.

SPECIAL ASSESSMENTS—BENEFITS, A QUESTION FOR THE JURY.—Where a special assessment is made for improvements in a city and the property owner objects to the assessment, the question of the benefits accruing is a question for the jury to determine. If the benefits assessed do not equal the cost of improvements, then the balance should be borne by the public.—*Watson* v. *City of Chicago.*—Filed Nov. 14, 1885.—Ill.

SPECIFIC PERFORMANCE—CONTRACT FOR SALE OF LAND—PART PAYMENT.—In a contract for the sale of land, where time is of the essence of the contract, an acceptance of part payment is a waiver of any default existing at the time the payment is made.—*Paulman* v. *Cheney.*—Filed Nov. 10, 1885.—Neb.

SPECIFIC PERFORMANCE—AGREEMENT OF MARRIED WOMAN TO SUPPORT HER FATHER.—A father agrees with his daughter to convey to her certain real estate in consideration that she will support him during his life. The conveyance is made, and the daughter, a married woman, dies before her father. *Held* that a specific performance cannot be enforced against her husband, although he is sole heir to his wife's estate.—*Bourget* v. *Monroe.*—Filed Nov. 19, 1885.—Mich.

STATUTE OF LIMITATIONS—WHAT WILL CONSTITUTE A NEW PROMISE—STATUTE BARRED BY FRAUD.—To revive a debt, barred by the statute of limitations, the evidence of a new promise to pay must be precise and explicit. If the debtor, by actual fraud, keeps the creditor in ignorance that a cause of action has accrued, the statute will not commence to run until the fraud is brought to the notice of the creditor.—*Stewart* v. *McBurney*—Filed Nov. 2, 1885—Pa.

STOCKHOLDERS—ACTION TO ENFORCE INDIVIDUAL LIABILITY.—A creditor of a corporation may bring an action, against a corporation, and join one or more of the stockholders for the purpose of enforcing individual liability of the stockholder for the debt. It is not necessary that he join all the stockholders as defendants.—*M. N. Bank* v. *Bailey Mnfg. Co.*—Filed Dec. 5, 1885.—Minn.

STOCK CERTIFICATE—SUBJECT TO ATTACHMENT FOR DEBT—IF PLEDGED OR SOLD PRIOR

TO LEVY OF ATTACHMENT, SUCH SALE OR PLEDGE IL VALID.—The interest of a stockholder in a corporation may be reached by garnishee process, even though the creditor is the corporation itself. If such stock be sold or pledged, as security for the payment of a debt, with power to have a transfer made on the books of the corporation, such sale or pledge is valid as against the garnishment.—*Norton* v. *Norton*—Filed Nov. 17, 1885.—Ohio.

SUPPLEMENTARY PROCEEDINGS — WAGES EXEMPT.—Where a receiver is appointed in supplementary proceedings, he cannot compel payment to him of wages due the debtor for his personal services.—*Howell* v. *McDowell.*—Filed Nov. 5, 1885.—N. J.

SURROGATE—POWER OF, TO CHARGE AN EXECUTOR FOR WILLFUL NEGLECT OF DUTY. —An executor who willfully and negligently refuses to exercise the power given him under the will, may be charged by the surrogate with the loss of the estate caused thereby. An action against his bondsmen for such loss cannot be sustained until legal remedies against the executor are exhausted, and to such action against the bondsmen a demurrer may be successfully interposed.—*Haight* v. *Brisbin.*—Filed Oct. 27, 1885.—N. Y.

TAXES.—OFF-SET OF THE INDEBTEDNESS—CITY CHARTER INCONSISTENT WITH STATUTE. —When a statute provides that a taxpayer is entitled to have his just debts deducted from the valuation of his real estate, and the city charter denies that right, it is *held* that the provisions of the statute must preval.—*State* v. *Richards.*—Filed Nov. 16, 1885.—N. J.

TAX SALE—PURCHASE BY THE COUNTY—REDEMPTION.—Where land is sold for taxes, in the absence of another bidder, the county commissioners may purchase the land. Having made such purchase, when the time for redemption has expired, the county may include other delinquent taxes in their action to foreclose the tax lien.—*Otoe County* v. *Mathews.*—Filed Nov. 25, 1885.—Neb.

TAX SALE — REDEMPTION— JUDGMENT WHERE NO PERSONAL APPEARANCE.—Interest upon redemption money after two years has expired, must be computed at six per cent. Where there is no personal appearance, judgment for taxes is not conclusive. —*Gage* v. *Buese.*—Filed Nov. 14, 1885.—Ill.

TAX SALE.—JUNIOR ASSESSMENT.—Land was sold in 1880 for delinquent taxes of 1879. The same lands were again sold in 1881 for taxes assessed prior to 1879. *Held* that the former sale had precedence of the latter, and the latter sale did not pass title. *Wass* v. *Smith.*—Filed Dec. 1, 1885.—Minn.

TELEGRAPH COMPANY—REASONABLE REGULATIONS — OFFICE HOURS.—To prescribe reasonable office hours is within the power of a telegraph company. The office hours need not be the same at all offices. A company is not bound to deliver a message out side of office hours. It is not necessary that an agent of the company shall be informed of the office hours at every other office.—*W. U. Tel. Co.* v. *Harding.*—Filed Nov. 16, 1885—Ind.

TENDER—WHEN IT MUST BE PAID INTO COURT.—Where personal property is held as collateral security for the payment of a note, and the maker of the note tenders the amount of the debt with interest, and demands a return of the securities, it is a valid tender. The fact that a third party has brought suit against the bailee and the debtor for the recovery of the property, is no reason why he should not surrender the property upon payment of the note. The money tendered need not be paid into court. —*Cass* v. *Higenbotam.*—Filed Oct. 30, 1885. —N. Y.

TITLE TO A PUBLIC OFFICE—RESIGNATION AND ELECTION OF SUCCESSOR—RECALLING

A county superintendent of schools having resigned his office, and his successor having been elected, he cannot withdraw his resignation. In an action by the superintendent elect to obtain possession of the

books and papers belonging to the office, the title to the office cannot be put in issue. —*McGee* v. *Axtel.*—Filed Nov. 3, 1885.—Ind.

TOWN BONDS—MISTAKE IN PRINTING OF THEM — EQUITABLE RELIEF. — Where the agent of a town, who was directed to procure some bonds printed, and by mistake left out the date when they should mature, which was not observed until after the bonds were negotiated. *Held* that the mistake might be corrected by proceeings in equity.—*Town of Essex* v. *Day.*—Filed Sept. 1885.—Conn.

TRIAL—MOTION FOR A NEW TRIAL—DILIGENCE.—On a motion for a new trial on the ground of newly discovered evidence, it will not be granted unless it affirmatively appears that the evidence could not have been sooner discovered.—*Carson* v. *Henderson.*—Filed Dec. 4, 1885.—Kans.

TRUSTS — WIFE'S SEPERATE ESTATE. — Where land is conveyed by trust deed to be held for use of the wife, with the provision that her husband "shall have the right to occupy, farm and control said land for her," this does not create any estate in the husband.—*Pemberton* v. *Pollard.*—Filed Nov. 25, 1885.—Neb.

TRUSTEE'S COMPENSATION—REFUSAL TO DISCHARGE A TRUST DEED.—When a trust is executed, the trustee, upon demand, is bound to execute a release of the trust deed, whether his commissions are paid or not, unless his compensation is secured by the deed.—*Blumenthal* v. *Huerter.*—Filed Nov. 13, 1885.—Ill.

TRUST—WHEN CREATED THE COURT WILL NOT ALLOW IT TO FAIL.—Where an assignment is made for the benefit of creditors, the title of the property conveyed passes immediately to the assignee, and upon refusal of the assignee to act, the court will either compel him to execute the trust or appoint another assignee as his successor.—*Golden's Appeal.*—Filed Oct. 26, 1885.—Pa.

TRUST—CONSIDERATION, LOVE ANE AFFECTION — ORAL DECLARATION OF INTENTION.—Where a father divides his land into four equal parts to be divided among his four children, and, to the husband of one of his daughters he executes a deed for that part which he intends for this daughter. At the time of signing and delivery of this deed he says to his son-in-law, the grantee, "I give this to Polly," and her husband, the grantee, replies, "It is Polly's and it shall be Polly's." *Held* that this oral declaration of intention was not sufficient to establish a resulting trust. The deed passed the title in fee to the husband, the grantee.—*Dilts* v. *Stewart.*—Filed Nov. 3, 1885.—Pa.

TWICE IN JEOPARDY.—CONVICTION FOR MURDER WHEN IT SHOULD HAVE BEEN MANSLAUGHTER.—Where a person is convicted of murder, when the statute makes the crime of which he was guilty, manslaughter, and upon appeal the judgment is reversed, on a second trial he cannot plead the former conviction as placing him twice in jeopardy.—*Packer* v. *People.*—Filed Oct. Term, 1885.—Col.

VENDOR AND VENDEE — SALE OF LAND SUBJECT TO A LIFE ESSATE.—Where land, subject to a life estate, is sold under an agreement that the purchaser shall have interest on all payments made up to the time he gets possession, and his interest is subsequently sold under an execution, the interest on payments made is still due and payable to the sheriff's vendee.—*Mason* v. *Rogers*—Filed Oct. 5, 1885.—Pa.

VERDICT ON ALL THE ISSUES—EFFECT OF.—Where a special plea and the general issue are pleaded, and a verdict is found for the plaintiff on the general issue which is inconsistent with the special plea, it will be held to mean that the verdict was found for him on all the issues. The assessment of damages by the jury is conclusive of this meaning of the verdict.—*Burdick* v. *Burdick.*—Filed Oct. 24, 1885.—R. I.

VENDOR AND VENDEE — UNCERTAIN OF

DESCRIPTION — NOTICE TO PURCHASER.— Where land is described in a deed as "all the right, title, etc. in and to those lots and parcels of land in the town of Silverton, in said venue, which remained undivided among the proprietors of said town-site upon delivery of deeds to the trustee, S. E. Jones, of said town-site to said proprietors, the same being one-twelfth interest in said undivided lots." *Held* sufficient to give notice to a subsequent purchaser.—*Blair* v. *Bruno.*—Filed Oct. Term, 1885.—Col.

VENIRE—DUTIES OF SHERIFF— IRREGULAR PROCEEDINGS.—The law requires that the sheriff shall have the custody of the wheel in the drawing of juries. Where the court charged that when the key to the wheel remained in the hands of the jury commissioners, it was fatal to the array. Exception being taken to that part of the charge and the case appealed, the ruling of the court is sustained and the case is remanded and a new venire awarded.—*Mitanning Ins. Co.* v. *Adams.*—Filed Nov. 9, 1885.—Pa.

WAIVER OF EXEMPTION—WHEN EXEMPTION MUST BE CLAIMED—The general rule is that exemption must be claimed before the attaching officer has incurred any expense, in caring for, or advertising the property for sale. Where two weeks time intervened between the levy and the demand for exemption, *Held* that the claim of exemption was in time, as it was not shown that any expense had been incurred by the delay.—*Ellsworth* v. *Sayr.*—Filed Dec. 10, 1885.—Iowa.

WAREHOUSE RECEIPT— NON-NEGOTIABLE IN FORM.—Where by the terms of a ware house receipt, the undertaking is restricted to the delivery of the property to the bailor, a transfer of the property cannot be affected, by the transfer of the receipt, without the consent of the bailor. — *Gill* v. *Frank.*—Filed Nov. 28, 1885.—Oregon.

WHEN INSTRUCTIONS ARE MISLEADING— SUGGESTING THAT THE JURY MAY RECOMMEND TO THE MERCY OF THE COURT.—If the judge, who has no discretion in passing sentence, instructs the jury that they may recommend the defendant to the mercy of the court, it will be held as misleading the jury and is sufficient ground for reversal.—*Hackett* v. *People.*—Filed Oct. Term, 1885—Col.

WHEN INJUNCTION WILL BE GRANTED— RIGHTS OF ENJOINING LAND OWNERS IN STOPPING THE OVERFLOW OF WATERS.— A stream of water which was on the boundary line, between two farms, at certain times overflowed on one of the farms, but not on the other. The owner of the land overflowed built an embankment, to protect his farm, and then the water overflowed on the adjoining farm. The owner of the latter asked for an injunction restraining his neighbor from erecting an embankment. *Held* that equity had no jurisdiction. Bill dismissed. —*Blair* v. *Brady.*—Filed Dec. 10, 1885.—Md.

WIFE'S INTEREST IN HER HUSBAND'S LIFE INSURANCE—HUSBAND MAY ASSIGN POLICY TO WIFE.— A husband may insure his life for the benefit of his wife, or he may assign a policy written to himself, to his wife, and although he has creditors at the time which he is unable to pay, the wife holds the policy free from the creditors of her husband.—*Elliott* v. *Bryan*—Filed Dec. 4, 1885.—Md.

WILL — GRAND-CHILDREN BORN AFTER DEATH OF TESTATOR.—In a will the testator directed that the residuary estate should be equally divided between the children of his son. At the time of testator's death, his son had four children living. He subsequently married a second time and another child was born to him. *Held* that the property should be divided among the five children, as a class, equally.— *Webster, Trustee* v. *Welton.*—Filed Sept. 1885.—Conn.

WILL—LIFE ESTATE TO WIDOW AND REMAINDER TO HEIRS — ADVANCEMENT BY WIDOW.—The purpose of a testator as expressed in his will, was to make provisions

for his wife during her life time and then divide his estate equally among his children. During the widow's life she made advancements in various sums to the children. Upon partition or distribution of the estate after her death, it is *held* that the advancements made by the widow during her life time were properly charged to the party receiving the same, and should be considered a part of his or her portion.—*Foltz* v. *Wert.* Filed Oct. 28, 1885.—Ind.

WILL CONSTRUED—VESTED REMAINDER.—In a will the following clause occurred "at the decease of my wife, all my estate, real and personal, shall go to and be equally divided among my children; the issue of a deceased child standing in the place of the parent." In construing the will it is *held* that a vested, and not a contingent remainder, was intended.—*Gibbens Adm'r* v. *Gibbens*—Filed Sept. 1885.—Mass.

WILLS—TESTAMENTARY CAPACITY.—The testamentary capacity, of a minister of the gospel, is sufficiently established by the fact that at the time of making and executing his will he was performing the ordinary duties of his calling, and this evidence cannot be overcome by the testimony of witnesses, not experts.—*Eddy's Appeal.*—Filed Oct. 5, 1885.—Pa.

WILL—TRUSTEES DIRECTED TO CARRY ON THE BUSINESS OF DECEDENT—REASONABLE COMPENSATION MAY BE ALLOWED.—Where a decedent's estate consisted in part of manufacturing business, and in the will the trustees were directed to carry on the business, until the testator's son shall be twenty-one years old, such trustees are authorized to employ persons at reasonable compensation to carry on the business.—*Turnbull* v. *Romeroy.*—Filed Sept. 11, 1885.—Mass.—

WASTE—ACTION ON BOND BY REMAINDERMAN.—Where personal property is bequeathed to one for life, with a remainder over, and the executor has committed waste or converted property to his own use, a suit upon his bond cannot be maintained by the remainder-man while the life-tenant lives.—*State* v. *Brown.*—Filed June 24, 1885.—Md.

WAYS—FREE GRAVEL ROADS—MEETING OF VIEWERS.—Where viewers appointed for the purpose of viewing and establishing a public roadway, and they have had notice of a meeting for the purpose of their appointment, they must hold their meeting at the time and place specified in the notice. A meeting at any other time and place will be void.—*Hobbs* v. *Bd. of Comr's.*—Filed Nov. 17, 1885—Ind.

WAYS—CANNOT BE ESTABLISHED ON GOVERNMENT LAND BY PRESCRIPTION.—A public way or road cannot be established by prescription on land owned by the government, and after an individual has acquired title to land from the government, the limitation required for the establishing of a way commences to run when the government passed the title to the land. A settler upon public lands, although he occupies the land, intending to obtain it under the pre-emption or homestead laws, cannot dedicate any portion of it for a public way or for any other purpose until he has done all that is necessary to perfect his title.—*Smith* v. *Smith*—Filed Nov. 7, 1885.—Kans.

WILL—DEVISE OF MONFY—WHEN NOT A LIEN ON REAL ESTATE.—Where a testator died seized of an estate, part realty and part personal property, and he devised a certain sum of money to trustees for a special purpose, which the personal property was insufficient to cover, and the "rest and residue" of his estate he left to his daughter, it was *held* that the devise made to the trustees was not a lien upon his real estate in the hands of a purchaser.—*Wiltsie* v. *Shaw.*—Filed Oct. 13, 1885.—N. Y.

WIDOW'S DOWER—NON-RESIDENT—CONVEYANCE—BURDEN OF PROOF.—By the revised statutes, Sec. 20, Chap. 23, a woman being an alien is not thereby barred of her dower rights in her husband's estate of which he *died seized.* In *Ligare* v. *Semple,* 32

Mich, 438, it was *held* that "where a husband conveyed lands in that state, while his wife was a non-resident thereof, she was not entitled to dower therein." This rule is adopted here. But where a father conveyed land to a daughter, when the obvious intention was to avoin liability on a decree for alimony payable to his wife, who was a non-resident, it was *held* that the burden of proof was upon the grantee to show a valid consideration. Otherwise her title would fail.—*Atkins* v. *Atkins*—Filed Dec. 1, 1885.—Neb.

WILL—WHEN A LEGACY A LIEN ON REAL ESTATE—INTENTION.—Whether a legacy is chargeable to the real estate of the testator, or not, is always a question of intention of the testator. A will may be interpreted in the light of all the surrounding circumstances. Where the testator bequeathed to his wife $1,000, to one son $4,000, and the residue of his estate to his four children, and when circumstances clearly show that the testator knew he had no personal property to cover the specific bequests. *Held* that the bequests were a charge on the real estate. *Held* farther that the two lagatees above named should share *pro-rata* when the estate was not sufficient to pay the bequests in full.—*McCorn* v. *McCorn.*—Filed Nov. 14, 1885.—N. Y.

WILLS—LIMITATION OVER ABSOLUTE FEE.—Where in a will, a devise is made in words which carry an absolute fee, and in a subsequent clause, a devise of the same estate is made over, upon the condition that the first devisee die siezed without issue, the devise over is void. The first taker has an absolute fee, whether the estate be personal or real property. This is the rule applied to a will which took effect before the enactment of the Revised Statutes. The application of the Revised Statutes in such case is not here discussed. —*VanHorn* v. *Campbell.*—Filed Nov. 14, 1885.—N. Y.

WILL—CONSTRUCTION OF.—A testator bequeaths all his property to his sons, to take effect when the youngest son shall arrive at the age of twenty one. Until that time, the sons were to cultivate the farm and give to the mother all the surplus over the debts and expenses, and after maturity of the youngest son, the property to be divided, with certain provisions for the support of the widow. The sons having worked the farm, pending the minority of the youngest son, it is subsequently sought to charge them with rent during that time. *Held* that this could not be done.—*Yeich's Appeal.*—Filed Oct. 5, 1885.—Pa.

In the case of Boor *et al.* v. Lowery, decided by the Supreme Court of Indiana, November 4, 1885, it was held that where physicians are in partnership, an opinion expressed by one in the absence of the other, as to the effects of the treatment which had been used by the latter, and its propriety, made after the employment was at an end, cannot be proved against the defendant physician, in an action against him; and especially if the action is based on the ground of negligence.

Lebanon M. Ins. Co. v. *Erb.*
Filed Nov. 2, 1885.—Pa.

(It is competent for a judge of the supreme court to grant a rule to show cause why a *non pros* should not be taken off, and a stay of execution is incident thereto.)

Shaffer v. *Haish.*
Filed Nov. 2, 1885.—Pa.

(An employer, who furnishes ordinary machinery, is not liable for injury received by an employee, who is using the machinery and is injured by reason of his own negligence.)

Spangler v. *City of Cleveland.*
Filed Nov. 17, 1885.—Ohio.

(A perpetual injunction will be granted only when it is clearly shown that the applicant is entitled to it.)

Schnider v. *White.*
Filed Nov. 17, 1885.—Oregon.

(Where a contract is made in behalf of a

third party, although he has no knowledge of the making of the contract, he may maintain an action on the same.)

Normandin v. *Gratton.*
Filed Nov. 19, 1885.—Oregon.
(An account stated is *prima facia* a setslement of all demands existing at the time, but is not conclusive.)

Kirkpatrick v. *Wheeler.*
Filed Nov. 13, 1885.—Col.
(On appeal. the record cannot be contradicted by the bill of exceptions.)

Scrivner v. *Diets.*
Filed Nov. 19, 1885.—Cal.
(An irregularity, in an affidavit for an attachment, cannot be taken advantage of by a third party, although it might be voided by the attachment debtor.)

Piople v. *Jones.*
Filed Nov. 24, 1885.—Cal.
(A new trial will not be granted, on the ground of newly discovered evidence, if it were possible to have produced the evidence on the former trial.)

Sharon v. *Sharon.*
Filed Nov. 20, 1885.—Cal.
(In an action on a promise to pay money where the defense is that the consideration was illicit cohabitation, it must be specially pleaded.)

Edwards v. *Crepin.*
Filed Nov. 23, 1885.—Cal.
(In a contract whereby an employer agrees to pay a stipulated salary to an employee, even though he be discharged, the agreement will be enforced.)

People v. *Robertson.*
Filed Nov. 19, 1885.—Cal.
(In case of homicide it is no excuse or mitigation, that the deceased and the defendant were in actual combat at the time of the killing. Where one takes advantage of an assault to kill his antagonist it is murder.)

Smiley v. *Fry.*
Filed Oct. 39, 1885.—N. Y.
(Holding that the statute of limitations does not commence to run, as against a certificate of deposit, until demand for payment has been made.)

Beatie v. *Citizens P. R. Co.*
Filed Nov. 9, 1885.—Pa.
(When a passenger on a street car gets off backwards, while the car is in motion and is njured, he is guilty of contributory negligence.)

Taylor v. *Middleton.*
Filed Nov. 11, 1885.—Cal.
(Holding that on a question whether a mining claim has been abandoned or not, is a question for the jury.)

Combs v. *Hawes.*
Filed Nov. 19, 1885.—Cal.
(Holding that where an absolute deed of land is given, as security for the payment of a debt, it will be construed as a mortgage.)

State Ex Rel Mhrton v. *Steveuson.*
Filed Nov. 25, 1883.
(Pertaining to the election of judge in second district—who may resist.)

State Ex Rel Castor v. *Connty Board.*
Filed Nov. 25, 1885.—Neb.
(Pertaining to the control which the county board may exercise over county offices.)

In Re Petitiou of Lindeke.
Filed Nov. 23, 1885.—Minn.
(On the question as to what acts or actions of a failing debtor may warrant the appointment of a receiver.)

Riley's Ex're v. *C. M. Fire Ins. Co.*
Filed Oct. 5, 1885.—Pa.
(Holding that where the agent of an insurance company employed a broker, the company is liable although the premium on a policy has not been received by the company. See Ante *Universal Ins. Co.* v. *Block.*)

Moore v. *Roberts.*

Filed Dec. 1, 1885.—Wis.

(Relating to establishing a legal highway. It does not cease to be a legal highway because part of it is not used as a public highway.)

Swith v. *Briggs.*

Filed Dec. 1, 1885.—Wis.

(Holding that an action may be maintained jointly against one who wrongfully cuts timber from the land of another and the one who purchases the timber so cut.)

United States Express Co. v. *Jenkins.*

Filed Dec. 1, 1885.—Wis.

(Defining circumstantial evidence and the application of it.)

City of Denver v. *Vernia.*

Filed Nov. 16, 1885.—Col.

(For a change in the street, the city is liable to the owner, of abutting property, for damages sustained. Where the city excavate the sidewalk and not the street, it is liable for damages sustained.)

Andrus v. *Knox.*

Filed Nov. 17, 1885.—Oregon.

(Defining what tide-lands are. Lands lying between high and low-water mark.)

Ellis v. *Cothran.*

Filed Nov. 14, 1885.—Ill.

(A defendant can not purchase claims against plaintiff after a suit is commenced and off-set them against plaintiff's claim.)

Hansen v. *Roter.*

Filed Dec. 1, 1885.—Wis.

(Holding that an executory contract, on which no money has been paid and in no part performed, is void within the statute of frauds.)

In Re Will of Walter.

Filed Dec. 1. 1885.—Wis.

(Holding that a will written in a language which the testator did not understand is valid, if the testator understood the purport of it.)

Barton v. *Brown.*

Filed Nov. 19, 1885.—Cal.

(Affirming the familiar rule that in the sale of personal property, title does not pass without actual delivery.)

Gillis v. *D. N. S. & S. W. Ry. Co.*

Filed Dec. 1, 1885.—Minn.

(Holding that when the chief engineer employed a sub-engineer to do certain work in laying out a route, the company is liable for the services rendered.)

Carl v. *McGonigal.*

Filed Nov. 19, 1885.—Mich.

(Holding that replevin will lie, without demand, for goods obtained by fraud.)

Lyon v. *Irish.*

Filed Nov. 19, 1885.—Mich.

(Holding that municipal officers are not individually liable on a contract officially made in good faith.)

Emerson v. *Bacon.*

Filed Nov. 19, 1885.—Mich.

(In which it is held that a debtor can do what he pleases with exempt property.—A creditor cannot attach because it is held in pledge.)

Wood v. *State.*

Filed Nov. 5, 1885.—V. J.

(Holding that an indictment charging conspiracy must allege corruption of the conspirators.)

Hill v. *Rasicot, Sheriff.*

Filed Nov. 21, 1885.—Minn.

(Holding that a sheriff is protected from personal liability, when he follows the terms of the judgment, in the sale of property and the distribution of the proceeds).

Lowery v. *Howard.*

Filed Oct. 30, 2885.—Ind.

(Holding that where a defendant pleads guilty of murder in the first degree, it is error for the court to fix his punishment without calling a jury.)

Grosslight v. *Cresup.*

Filed Nov. 19, 1885.—Mich.

(Holding that a garnishee, being sued by the principal debtor, may plead the garnishee proceedings in abatement.)

Neill v. *Lacy.*

Filed Oct. 5, 1884.—Pa.

(Holding that unseated land, and not the owner, is liable for taxes, and the owner may become the purchaser at a sale for taxes.

Commonwealth v. *Welles.*

Filed Oct. 19, 1885.—Pa.

(Holding that the provisions of the election law, concerning wages, do not apply to primary elections for party candidates.)

Anthony v. *Coswell, Trustee.*

Filed Oct. 13, 1885.—R. I.

(Holding that a non-resident trustee can not be taxed in the town where his *Cestuis que trustent* resides, when the trust estate is not within the state.)

Society Perun v. *City of Cleveland.*

Filed Nov. 13, 1885.—Ohio.

(A corporation, although irregularly organized, is a corporation de facto, and its franchise cannot be inquired into in a private suit, where other parties have become interested.)

White v. *White.*

Filed Nov. 19, 1885.—Mich.

(Holding that a wife, living apart from her husband, may maintain replevin against her husband for her property in his possession.)

State v. *Nayor of St. Panl.*

Filed Nov. 11, 1885.—Minn.

(Holding that the mayor of St. Paul has no authority to revoke the license of an auctioneer.)

B. & A. R. Co. v. *City of Boston.*

Filed Sept. 4, 1885.—Mass.

(Holding that the street commissioners have a right to lay and construct a footway across a railroad.)

Lane v. *State.*

Filed Nov. 5, 1885.—N. J.

(Holding that a justice of the peace has no right to demand his fees upon filing with him a criminal complaint.)

Garey v. *Mayor of Petarson.*

Filed Nov. 5, 1885.—N. J.

(Holding that a married woman is not barred by the statute of limitations in bringing her action for damages caused by a riot.)

Meech v. *Lamon.*

Filed May 26, 1884.—Ind.

(Holding that a new promise will not revive a debt, barred by bankruptcy discharge, unless distinct, unequivocal and certain.)

MORTGAGE—ASSIGNMENT OF NEED NOT BE RECORDED,—An assignment of a mortgage is not a conveyance and need not be recorded to protect the rights of assignee. Where the fee is acquired by the mortgagee merger will not take place if against the interest of the mortgagee.—*Watson* v. *D. M. & T. Co,*—Filed Nov. 18, 1885.—Oregon.

MUNICIPAL CORPORATION — AUTHORIZED TO PLANT AND MAINTAIN SHADE TREES—LIABILITY FOR INJURY.—Mhere a city has authority to plant and preserve shade and ornamental trees in the streets it is liable for injury from the falling of limbs or branches of the trees. The owner of a lot cannot be held responsible for the trimming and care of trees in front of his lot.—*Weller* v. *Mc Cormick.*—Filed Nov. 27, 1885.—N. J.

MUNICIPAL CORPORATION — NOT LIABLE FOR NEGLIGENCE IN PERFORMING A PUBLIC DUTY.—Where a member of the fire department was injured by reason of an imperfection in a part of the apparatus used by the company, he seeks to recover damages for the injury from the city on the grounds of negligence in allowing the apparatus to be out of repair. *Held* that he cannot recover. —*Wild* v. *City of Paterson.*—Filed Nov. 5, 1885.—N. J.

READ THE FOLLOWING EXPRESSIONS OF APPROVAL.

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W. L. SNELL.

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I am a subscriber to all these, and cannot do without them, but it seems to me that a Law Journal that would give a syllabus of the decisions of ALL THE STATES AND ALL THE CASES IN THOSE STATES, will fill an unoccupied place in legal journalism, and be an invaluable aid to the legal profession. * * * Yes sir, I'll give your project my support. I am, sir, yours, etc.

FRANK MILLIS.

The Chicago Law Journal.

CHICAGO, FEBRUARY, 1886.

The publishers of the JOURNAL have reason for congratulation, on account of the great favor with which the receut change and enlargement thereof has been received by its patrons, The few who had not replied to our special notice, in last october number, had, in most cases, only neglected to give us an expression of approval, and as their attention is called to the matter personally, we find the approval is substantially unanimous. The following letters from two of our valued patrons, is indicative of the general character of replies which come to us:

From JAMES H. VAN CLEEF, ESQ., Att'y.
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"Dear Sir: Your circular received, and because you have advanced the price of your JOURNAL, I do not intend to neglect the renewal of my annual subscription to the same, as I consider you have made a grand improvement, that will be of great advantage to the profession. Yours &c.,
JAS. H. VAN CLEEF."

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Respectfully, BOWMAN & PILLOW.

The increase in our list of subscribers for the past two months, has also been very gratifying. Having, as we believe, put the JOURNAL on a basis which will make it almost invaluable to the active and busy lawyer, we shall spare no effort to carry out this plan in the spirit in which it was conceived, and in doing so, we hope and believe, we will merit and receive the liberal support of the profession. We shall be pleased at all times, to receive suggestions from our subscribers, as to any point wherein any improvement can be made in our method of noles.

ACCRETION—SHIFTING OF OCEAN BEACH.—Where a party claimed title to beach lands under ancient deeds, and the beach had shifted, and for a number of years land which he owned was overflowed and subsequently the waters recede. *Held* that the land thus for a long time submurged did not become the property of the state. Land lost by erosion may be returned by accretion.—*Muloy* v *Norton*.—Filed Nov. 24, 1885.—N. Y.

ADMINISTRATION—DISTRIBUTION IN KIND—DISCRETION OF THE COURT.—Where an estate consist of personal property, a distribution in kind may be ordered by the court, but where the estate consists in part of chooses in action the statute does not warrant an order of distribution.—*Waterman* v *Olden*—Filed Nov. 14, 1885.—Ill.

AGENCY—PROOF OF—POSSESSION, AS EVIDENCE OF AUTHORITY.—An agency cannot be established by the declarations ot the agent. Possession by a tenant at sufferance confers upon the tenant no power to bind any one's interest but his own. One who is furnished with funds and instructed to build a house has no authority to assume an obligation binding his principal in the payment of a debt.—*Proctor* v. *Tows*.—Filed Nov. 14, 1885.—Ill.

AGENCY—FRAUDULENT SALE BY AGENT—PRINCIPAL MUST SUFFER IN PREFERENCE TO AN INNOCENT PURCHASER.—An agent, to sell on commission, had taken a piano to his house which belonged to his principal, and subsequently sold it for cash and failing to remit the proceeds to his principal, his principal replevies the piano. *Held* that the agent had power to sell it and that an action of replevin would not lie as against an innocent purchaser.—*Dias* v. *Chickering*.—Filed Dec. 4, 1885.—Md.

AGENT—RATIFICATION BY PRINCIPAL—REGENTS OF THE UNIVERSITY—Where the land agent of the university acts upon instructions, directing him to receive applications for land, which intsructions did not eminate from the Board of Regents, but where the Board subsequently recognized his action in the premises, such instructions will be held to eminate from the Board and will be

held binding. — *White* v. *Douglass.*—Filed Nov. 26, 1885.—Cal.

ALIBI—NECESSARY PROOF OF.—In a criminal action where the defendant undertakes to establish an alibi,it is not essential that he prove it beyond a reasonable doubt. Evidence on that point may be supported by other evidence and circumstances in the case. It is the duty of the jury to take into consideration all the circumstances in the case and if they raise a reasonable doubt of defendants presence at the commission of the crime, they should acquit.—*State* v *Fry.* —Filed Dec. 10, 1885.—Iowa.

APPEAL–AUTHENTICATION OF TRANSCRIPT. —Upon appeal, the clerk should transmit so much of the record of the case as the appellant may direct, and the transcript must be certified by the clerk under seal of the court. —*S. B. D. & R. Co.* v. *C D. & R. Co.* —Filed Dec. 1, 1885.—Col.

APPOINTMENT OF RECEIVER–PARTNERSHIP —SUFFCIENCY OF COMPLAINT OR PETITION— Where a partnership has expired, and one of the partners is proceeding to wind up the business, the other partner cannot have a receiver appointed,on the ground that he has not sufficient time or experience to attend to it.—*Bufkin* v. *Boyce.*—Filed Nov. 23, 1885.—O.

APPEAL—BOND FOR STAY OF EXECUTION —ACTION ON.—Where an appeal is taken from an order for the payment of money, and a stay-bond executed,upon affirmance of the order by the appellate court, an action may be maintained on the bond for the debt and interest.—*Errickson* v. *Elden*—Filed Dec. 18, 1885.—Minn.

APPEAL—REVERSED FOR DECREE — ADDITIONAL EVIDENCE—Where a case has been reversed and remanded for decree, the lower court may order the admission of additional evidence and no appeal will lie from such an order.— *Garmore* v. *Sturgeon.*— Filed Dec. 15, 1885.—Iowa.

ARGUMENT OF COUNSEL—TIME ALLOWED —NEGLIGENCE.—The time allowed for argument by counsel is largely in the discretion of the trial judge. A person injured by machinery, which he might reasonably have avoided, is guilty of contributory negligence and cannot recover. However slight the negligence on the part of plaintiff, if but for that negligence the accident would not have happened, he is charged with contributory negligence which will bar his recovery.— *Hurst* v *Buruside.*—Filed Nov 30 '85.–Ore.

ASSIGNMENTS–CONFESSION OF JUDGMENTS FOR REFEREE—Where a debtor makes and delivers a judgment note to a creditor,whom he wishes to prefer, and the following day, makes an assignment for the benefit of creditors, such note is valid. Although he had in contemplation the assigument,at the time of making the note, it is valid. The act of 1843 simply prohibits preferences in assignments.—*L. S. Banking Co.* v. *Fuller.*— Filed Oct. 5, 1885.—Pa.

ASSIGNMENT—REMONAL FROM STATE TO UNITED STATES COURT.—Where an assignment for the benefit of creditors is filed in a state court, and an issue is raised as to the priorities between parties, or where one of the parties resides in another state, the case may be removed to the United states Court and the judgment in that court will be final. —*Knoxville National Bank* v. *Hanirick.* —Filed Dec. 12, 1885.—Iowa.

ASSIGNMENT OF DOWER—JURISDICTION OF PROBATE COURT—In the settlement of an estate, the probate court cannot determine the matter, where there is a controversy between the widow and strangers who are purchasers of land belonging to the estate, at probate sale.—*Hewict's appeal*—Filed Dec. 15, 1885.—Conn.

ASSIGNMENT—ACTION BY ASSIGNEE TO RECOVER GOODS WRONGFULLY ATTACHED— CHATTEL MORTGAGE—In an action by an assignee, in an assignment for the benefit of creditors, recovery of the attached property may be had without showing the value of

property, and although such goods may be subject to a chattel mortgage it does not defeat his recovery.—*Goldsmith* v *Willson.* —Filed Dec. 14, 1885.—Iowa.

ATTACHMENT—CAUSE OF ACTION IN PART FRAUDULENT.—Where an attachment issues upon an affidavit alleging that the debt was fraudulently contracted, and the facts appear that only a part of the debt, which is the cause of action, was fraudulently contracted it is *Held* that the attachment should be discharged.—*Mayer* v. *Jingre.*—Filed Dec. 1, 1885,—Neb.

ATTACHMENT—LIABILITIES OF BAILEES.—Personal property being attached on mesne process, and a receipt given therefor by defendants, to an officer whose term expired before judgment in the case, his successor holding the execution, made demand on defendants for the property but not upon the attaching officer. *Held* that in the absence of demand upon the attaching officer no action could be maintained against defendants —*Shepherd* v. *Hall.*—Filed Dec. 8. 1885. —Me.

ATTORNEY— NEGLIGENCE—DAMAGES. — Where an attorney, by negligence, allowed judgment to be taken against his client, and subsequently purchased the judgment, the client brought an action for damages for allowing the judgment to be taken, and asked that an injunction issue restraining him from enforcing payment of the judgment pending his action for damages. *Held* that in the absence of an allegation that the defendant was insolvent an injunction would not issue. —*Baker* v. *Ryan.*—Filed Dec. 15, 1885.— Ia.

BANKRUPTCY—DISCHARGE OF INSOLVENT BY STATE AFTER HE HAS BEEN REFUSED DISCHARGED BY UNITED STATES.—Under the insolvent act, no discharge can be granted the debtor, if he has within three years received the benefit of any insolvent act, and if he has been adjudged a bankrupt under the United States law, and refused a discharge, it is a bar to a discharge from the state.—*In Re Smith.*—Filed Dec. 19, 1885.—Cal.

BANK MAKING COLLECTION—BOUND TO ACCOUNT—Notes are deposited in bank for collection. The maker of the notes is indebted to the bank also. An action is commenced by the bank to recover for the notes and also its own claim against the maker of the notes. An execution issues, and a sale of defendants property had, and the bank buys the property at a price which does not cover the whole indebtness. *Held* that the bank and the holder of the notes should share pro-rata, in the proceeds of the sale of the propty, in the ratio of their claim to the price at which the property was sold.—*Marks* v. *Bodie Bank.*—Filed Nov. 30, 1885.—Cal.

BANKS—CERTIFICATE OF DEPOSIT—ENDORSER—Where a stranger endorses a certificate of deposit, and the endorsement is contemporaneous with the the issue of the certificate, the endorsement in blank is *prima facie* evidence of a contract of guaranty, and the consideration on which the certificate is issued,is sufficient to sustain such gnaranty. —*Jones*, v· *Kuhn.*—Filed Dec 4 1885–Kans.

BASTARDY—MARRIAGE TO ANOTHER MAN DURING PREGNANCY—PRESUMPTION OF LAW, The natural father, of an illegitimate child, cannot be held for its support, if the mother during pregnancy marries another man. The child, born after wedlock, is presumed to be legitimate, and the husband assumes the obligation of its support by marriage of its mother. This rule does not apply where heirship is involved—*Miller* v. *Anderson.*— Filed Nov. 3, 1885.—Ohio.

BILL OF LADING—NEGLIGENCE BY CARRIER IN DELIVERY OF GOODS CONTRARY TO INSTRUCTION.—Where it was agreed between vendor and vendee in the presence of a station agent, that the bill of lading, should show the shipper to be the consignee, and that an advance should be obtained from the bank on the bill of lading, and in accordance therewith a draft,with the bill of lading attached is discounted. The goods are shipped and delivered to the drawee before

payment of draft. *Held* that the railroad company is liable because of their negligence in delivering goods before payment.—*Garden Grove Bank* v. *H. & S. Ry. Co.*—Filed Dec. 11, 1885.—Ia.

BILL OF SALE—BAILMENT—PRESUMPTION OF AN ACCOUNT STATED—Where an absolute bill of sale is pleaded, as a bailment for a special purpose, the party is estopped from showing the purpose of the bill or bailment, by oral testimony. Where a promissory note has been made and delivered it raises a presumption of a settlement and a statement of account.—*Allen* v. *Bryson.*—Filed Dec. 12 1885.—Iowa.

BURGLARY—AVERMENT AS TO WHOSE HOUSE WAS ENTERED—VARIANCE.—In an indictment for burglary, the averment that the ownership is in the occupant, if he is lawfully in possession, and the proof shows that the ownership is in another, such variance does not invalidate the indictment. The possession of stolen property, shortly subsequent to the time it was stolen, is *prima facie* proof that the person having it in possession committed the theft, and if burglary is connected with the theft it is applicable to the proof of the burglary also.—*Smith* v *People.* —Filed Nov. 14, 1885.—Ill.

CHATTEL MORTGAGE—WAIVER OF LIEN BY MORTGAGEE—FAILURE TO ASSERT CLAIM.—The mortgagee, of a chattel mortgage, if present when a levy is made upon goods on which he holds a mortgage, should assert his claim, but if he fails to do so he does not thereby waive his lien on the property under the mortgage, unless the attaching creditor is mislead and suffers loss by reason of his silence. —— *Gunsell* v. *McDounell.* —— Filed Dec. 11, 1885.—Iowa.

CIVIL RIGHTS—SKATING RINK NOT A PLACE OF PUBLIC AMUSEMENT.—Where a skating rink is carried on without any municipal or state license, it is not a place of public amusement in that sence which makes applicable the law of civil rights, and the owner is not liable for damages in electing whom he shall admit to the rink.—*Bowlin* v *Lyon.*—Filed Dec. 11, 1885.—Ia.

CONTRACT—CONSIDERATION—RETRIAL—Where an action is commenced to recover on a promise, the consideration of which was that plaintiff would abstain from intoxication it is competent for the defense to introduce evidence of plaintiff's intoxication as a breach of contract. Where, upon appeal, a cause is "reversed and remanded" and in the decision of the appellate court there are no words qualifiying or limiting these words, the parties have a right to a retrial of the issues.—*Myers* v *McDonald.*—Filed Nov. 30 '85.—Cal.

COMMON CARRIERS—EJECTING A PASSENGER FROM RAILWAY CAR—PASSENGER RESISTING.—Where a conductor of a railway train ejects a passenger from the car, while the train is in motion, he is guilty of an assanlt. If a conductor assumes to put a passenger off the train, who is not wrongfully on the car, it is not necessary for the passenger to forcibly resist being ejected, in order to lay the foundation for an action. It is sufficient if he protests against the wrong about to be done him.—*State* v. *Rumey.*—Filed Dec. 4, 1885.—Minn.

COMMON CARRIERS—BILL OF LADING—NEGLIGENCE.—A package of specie shipped in Havre, France, and consigned to "Frank Guillaum, 152 and 154 Blecker street, New York, Utica, America," was delivered to a party on Bleeker street, New York City, wrongfully, when the proper place of delivery was in the City of Utica, New York. In an action against the carrier to recover the value of the package, *Held* that the question of negligence was properly a question for the referee.—*Guillaum* v *Gen. Frausathutie Co.*—Filed Nov. 24, 1885.—N. Y.

COMMON CARRIER—PENALTY FOR UNJUST DISCRIMINATION.—A common carrier is liable for triple damages for unjust discrimination and the statute must be strictly construeed. The failure to furnish cars, for

transportation of freight when wanted,is not such a discrimination as is contemplated by the statute.—*Bond* v. *W. St. L. & P. Ry. Co.*—Filed Dec. 15, 1885.—Iowa.

CONTRACT—AGENT TAKING CONTRACT IN HIS OWN NAME.—A party,as agent for plaintiff,entered into a contract with the government for the transportation of mail, but took the contract in his own name. *Held* that the contract was for the benefit of plaintiff, and that he must account to them. —*Oregon Steam-ship Co.* v. *Otis.*—Filed Nov. 24, 1885.—N. Y.

CONTRIBUTION TO ELECTION FUND–WHEN LAWFUL.—The only objects for which a canidate for any office may legally contribute are 1st, for expenses of printing, 2nd, for circulation of votes and papers, and 3rd, for conveying the poor, sick or infirm to the polls on electiou day. An agreement to contribute for any other purpose is illegal. —*Foley* v. *Spier*–Filed Nov. 24, 1885–N. Y

CONTRACT—OBTAINED BY FRAUD—EVIDENCE—In an action on a contract, made under fraudulent representations made by a third party, the declarations made as inducements, to enter into the contract, may be produced in evidence. No action will lie on parol representations as to a man's credit, although the party making the representations may have entered into conspiracy with the party whose credit he exagerates. —*Cook* v. *Chinchman.*—Filed Dec. 8, 1885. —Ind.

CONTRACT OF PURCHASE—PAYMENT OF A PROMISSORY NOTE BY A THIRD PARTY.—Where a third party, having no interest to protect, pays the note of another, he is not entitled to the rights of subrogation, as if he had purchased the note. The contract of purchase, if made, must be made with the holder, and cannot be made with the maker of a note.—*Binford, Adm'r.* v. *Adams, Adm'rs.*.—Filed Nov. 24, 1885.—Ind.

CONSTITUTIONALITY OF STATUTE—SPECIAL LEGISLATION —WHAT IS.—The enactment of a statute regulating the internal affairs of towns or counties, which applies in general terms,to all towns and counties,but by reason of prior existing condition of things, in reality only affects one, the statute is not thereby special or local and therefore,unconstitutional but valid.—*State Ex Rel, Burnstead* v. *Govern.*—Filed Dec. 19, 1885.—N. J.

COMMERCIAL TRAVELERS—NOT PEDDLERS —LICENSE IMPOSED.–Where an agent exhibits samples and receives orders, for goods to be shipped by his principal, as is the general custom of what is know as commercial travellers, such agent is not a peddler or a merchant, and cities have no authority to compel such agents to pay a license tax as a pedler or merchant.—*City of Kansas* v. *Collins.* —Filed Dec. 4, 1885.—Kans.

COMMON CARRIER — CLASIFICATION OF FREIGHT —FRAUDULENT REPRESENTATIONS OF SHIPPER.–Where a common carrier makes special and low rates on household goods, and the shipper contracts for a car load of household goods, and then puts into the car other goods not household, the carrier is entitled to chaige regular rates for the goods fraudulently shipped,notwithstanding the contract made. Household goods do not include potatoes, bacon, vinegar or salt.–*Smith* v. *Finley.*—Filed Nov. 7, 1885.—Kans.

CONTRACT TO CONVEY LAND—OFFER AND ACCEPTANCE BY MAIL OR TELEGARAPH—Where an offer to sell land is made by letter and,on receipt of the same the party telegraphs the seller as follows, "accept your offer for two buildings at five thousand dollars, money at your order at First National Bank here. Telegraph me immediately when to expect the deed." This is not such an acceptance as will entitle the purchaser to specific performance—*Sawyer* v *Brossart* —Filed Dec. 15, 1885.—Iowa.

CONTAGIOUS DISEASES — LIABILITY OF COUNTY FOR CARE OF SICK—PAUPERS—Persons rendering service, at the request of

the board of health, in caring for persons sick with the small-pox, or any contagious disease, cannot recover of the county for such service, unless the persons cared for are paupers. Where such a claim is presented and allowed in part, it does not bind the county for the whole or the balance,—*Gill v. Appanoose Co.*—Filed Dec. 16, 1885.—Iowa.

CONTRACT—IN AID OF PRIVATE IMPROVEMENTS.—LIABILITY.—Where a party agrees with another to pay a certain sum, on condition that the corporation of which the latter is a member, will erect a pork-packing house of certain capacity in the county, and the corporation does erect the house, in accordance with the conditions named, he is liable for the payment of the sum, although the party with whom he made the contract may have withdrawn from the corporation. —*Paddock v. Bartlette.*—Filed Eec. 16, 1885.—Iowa.

CONTRACT WITH INSANE PERSON—EXECUTED, AND FAIR AND REASONABLE.—Where a contract has been made with an insane person, and the party did not know of the insanity, if the contract is fair and reasonable, and has been executed, it will be upheld.—*Alexander, par Guar. v. Haskins.* —Filed Dec. 17, 1885.—Iowa.

COUNTY WARRANTS DRAWN ON PARTICULAR FUND—SUIT TO RECOVER.—Parties holding county warrants, drawn on a special fund, may, upon refusal of the county treasurer to pay, bring suit against the county for the same, and it is not necessary that he first request the levy of a tax to pay the same. —*Mills Co. Nat. Bank v. Mills Co.*—Filed Dec. 15, 1885.—Iowa.

CORPORATE STOCK—VENDEE ASSUMMING ALL LIABILITY THEREON—ASSESSMENT SUBSEQUENTLY PAID BY THE VENDOR.—Where the owner of corporate stock sells under an agreement that the vendee shall assume all liability thereon, an assessment is subsequently made on the stock which the vendor pays, he may recover the same from the vendee, and the vendee cannot plead that the claim which the vendor thus paid was barred by the statnte of limitations—*Barly* v. *Shroyer.*—Filed Oct. 7, 1885.—Penn.

CORPORATION—FAILURE TO PERFECT AN INCORPORATION—INDIVIDUAL LIABILITY OF PARTIES SIGNING THE ARTICLES.—Where several parties sign articles of incorporation, and fail to perfect the incorporation, they are individually liable on any contract they make, although the contract purports to be made by the corporation. The parties however, are not bound as partners by the act of any one of them.—*Johnson* v. *Corser.*—Filed Dec. 12, 1885.—Minn.

CORPORATIONS—CERTIFICATE DESTROYED OR LOST—PROOF OF ORGANIZATION BY PAROL TESTIMONY—In *quo warranto* proceedings, to ascertain by what right a corporate body exercise its franchises, where the record of incorporation is lost or destroyed by fire, it is competent to show, by parol testimony, the organization of the company according to law. Where a toll road company has collected toll for 20 years it raises a presumption that such company was properly organized. —*R. H. & E. R. Co.* v. *People Ex Rel Lawless.*—Filed Nov. 14, 1885.—Ill.

CORPORATION—ELECTION OF OFFICERS.—Where the by-laws of a corporation provide for the election of directors, by the cumulative method of voting, aud that the seven candidates having the greatest number of votes shall be declared elected, and the result of an election was that five of the candidates had a plurality of votes and two others were a tie, it is *held* that the election is valid as to the five having a plurality of votes, but that in case of the two, who had each an equal number of votes, there was no election —*Wright* v. *Commonwealth.*—Filed Oct. 5, 1885.—Pa.

CRIMINAL LAW—IMPROPER ALLEGATIONS BY COUNSEL IN ARGUMENT—PRESENCE OF DEFENDANT UPON DELIVERY OE VERDICT.—It is absolutely essential to the validity of

the conviction, that the prisoner be present at the rendering of the verdict. If the prosecuting attorney in his argument to the jury, impute to the defendant a higher crime than that of which he stands charged,and concerning which he was not permitted to offer testimony, it will invalidate the conviction.—*Smith* v. *People.*—Filed Dec. 11, '85.—Col.

CRIMINAL LAW—COMMITMENT BY MAGISTRATE.—In a warrant of commitment, to await the action of the grand jury,it is sufficient if it clearly designate the crime which has been committed and states that the evidence was sufficient to establish probable cause to believe the defendant guilty. It is not necessary that the crime charged be set out as fully and explicitly as in an indictment. —*Collins* v. *Brackett.*—Filed Dec. 5, 1885. —Minn.

CRIMINAL LAW—DISCHARGE OF JURY WITHOUT THE CONSENT OF THE DEFENDANT. A trial Judge has no right to discharge the jury,on the ground of their inability to agree upon a verdict,so long as there is reasonable hope of their agreement, and if he does so, without the consent of the prisoner,he is entitled to be discharged. Where a case was submitted at 7 p. m. and at 6 a. m. the next morning the jury reported that they could not agree and were discharged without the consent of the prisoner, *Held* that the discharge of the jury was unauthorized. —*State* v. *Schuchardt.*—Filed Dec. 1, 1885. Neb.

CRIMINAL LAW—DEPOSITION TAKEN AT INSTANCE OF PRISONER.—Where a deposition of a witness, is taken at the instance of the prisoner and admitted upon the trial without objection, it is no ground for error. No error can be made available upon appeal which has not been excepted to at the trial and ruling of the court had upon it.—*People* v. *Guidici.*—Filed Nov. 24, 1885.—N. Y.

CRIMINAL CONTEMPT—DISREGARD OF SUBPOENA ISSUED BY DISTRICT ATTORNEY.—Punishment for criminal contempt cannot be summarily administered for disregard of a subpœna issued by a district attorney. Contempt cannot be alleged except upon disobedience of some mandate or process issued by a court of record duly organized.—*Sherwin* v *People.*—Filed Nov. 24, 1885.—N. Y.

CRIMINAL LAW—CIRCUMSTANTIAL EVIDENCE—INSTRUCTIONS.—In a criminal action the state may prove any material fact by circumstantial evidence. Where the trial court is asked to give instruction, which has been already given substantially,it is not error to refuse to give such instruction.—*State* v *Reno.*—Filed Dec. 12, 1885.—Iowa.

CRIMINAL LAW—INSUFFICENT COMPLAINT CURED BY PLEA OF GUILTY.—A defective complaint which might have been taken advantage of by demurrer, is held to be cured by verdict or by a plea of guilty.—*State* v. *Knowles.*—Filed Dec. 4, 1885.—Kans.

DEPARTMENTS OF GOVERNMENT—JUDICIAL AND LEGISLATIVE.—It is the office of the legislative department of the government to determine what the law is, and the rights of the parties in reference to transactions already had, and it is the office of the judicial department to determine what the law shall be in future cases arising under it.—*Smith* v *Strother.*—Filed Dec. 18, 1885.—Cal.

DEBTOR'S BOND—DISCLOSURE—WAIVER BY CREDITOR.—In selecting justices before whom a disclosure might be had, the creditor selected a justice residing in another county. The debtor objecting to proceeding before this foreign justice, another is chosen in his place with the consent of the creditor. *Held* that the creditor did not thereby waive any right which he formerly had in the premises.—*Blake* v. *Peck.*—Filed 12, Dec. 1885.—Maine.

DEBTOR AND CREDITOR—COMPROMISE—CONCEALMENT.—The law exacts of all parties to a composition the most scrupulous good faith. It will not permit a part of debt witheld from the arangement to be enforced

and it will compel the cancellation of securities received in violation of the principal of equity. —*Almon* v. *Hamilton.*—Filed Nov. 24, 1885.—N. Y.

DEED—INTERPRETATION OF BOUNDARIES.—In construing the description of land, in a deed, monuments, courses and distances, and the designated quantity, are to be considered in the order named. Where reliance is placed chiefly on the quantity, all the recitals in the deed and the circumstances surrounding the execution of the same should all be considered.—*Allen* v. *Rersey.*—Filed Nov. 23, 1885.—Ind.

DIVORCE—ALIMONY—A FATHER'S GIFT TO HIS DAUGHTER.—A man and woman, each having been previously married, aud each having a child, marry, and shortly after their marriage they execute a deed, of land owned by the husband, to his daughter, the issue of his first marriage. This deed was deposited but not recorded for about six years, and about the time it was filed for record proceedings were commenced by the wife for a divorce from her husband and for alimony. She was subsequently granted a decree, and asuming that the conveyance to the daughter six years previous was void, the decree granted the plaintiff a life estate in the said lands, and made all sums payable under the decree a lien upon the land. *Held* that this was error. That the conveyance vested an absolute fee in the daughter.—*Brnnerv Bruner.*—Filed Nov. 14, 1885.—Ill.

DIVORCE—CRUELTY—WHAT WILL CONSTITUTE.—In an action for divorce by the wife, on the ground of cruelty, where it was shown that the defendant while measurably intoxicated, quarreled with his wife and son, and in a general fight he struck her not caring whether he hit her or the son, it is *held* insufficient to establish cruelty on which to grant a decreee.—*Shorediche* v. *Shorediche* —Filed Nov. 14, 1885.—Ill.

DIVERSION OF WATER—RELIEF IN EQUITY—In a complaint, asking for an injunction to restrain the wrongful diversion of water, it is sufficient if plaintiff avers that he has a right to the use and enjoyment of the same. An injunction may he had restraining such wrongful diversion, although the plaintiff has suffered no actual damages, the relief being granted in anticipation of damages which may accrue if continued.—*Moore* v. *Clear Lake Water W'ks.*—Filed Nov 30 '85—Cal.

DRAFT—NOTICE TO DRAWEE–ASSIGNMENT—Where a creditor draws an order on a debtor, payable to a third party, who presents it for payment and it is refused, and the drawer soon after makes an assignment, the presentation of the order is sufficient notice to give the holder a lien on the funds which it calls for, in so far as there are funds due the drawer. The holder of the order may maintain his claim as against the assignee.— *Fell* v. *Mc Mannus.* — Filed Dec. 15, 1885.—N. J.

DOWER—MARRIAGE SETTLEMENT IN LIEU OF DOWER MADE WHILE UNDER AGE OF 21.—Where a marriage is intended, and the woman under 21 years of age, if a marriage settlement is agreed upon between her and her intended husband, whereby she accepts a certain sum in lieu of dower, such agreement is not valid and will not bar her right of dower because of her infancy when she entered into the same.—*Drew* v. *Drew*—Filed Dec. 10, '85. N. J.

ELECTION—HELD FOR STATE PURPOSES—A CITY NOT LIABLE FOR EXPENSE—Where the police commissioners of New Haven procured a hall in which to hold an election for state purposes, it is *held* that they were the agents of the state in so doing, and that the city is not liable for the bill of expense thus created.—*Perkins* v. *City of New Haven.*—Filed June Term 1885.—Conn.

ELECTION LAW—POWER OF LEGISLATURE TO REGULATE.—The legislature has power, under the constitution, to pass an act requiring all voters to register before being permitted to vote, but such an act must be reasonable and not inconsistent with the

right of suffrage. Where such an act allows only seven days for registering and no provisions for registering subsequently, and no provisions whereby those may vote who had a good and sufficient excuse for not registering. *Held* unreasonable and void.–*Daggett* v. *Hudson.*—Filed Dec. 1, 1885.—Ohio.

ELECTIONS—POWERS OF CANVASSING BOARD—MANDAMUS.—The duties and powers of the canvassers of election returns, are only ministerial, and they have no power to decide upon the validity of such returns on a question of fraud, but must count them as they are returned. In a mandamus proceeding, to compel the canvassers to omit or to count certain of the votes, the court has no power to decide upon their validity. The remedy is by contest before the body for which the candidate is a member elect.—*Dalton*, v. *State Ex. Rel. Richardson*—Filed Dec. 15, 1885.—Ohio.

ELECTION OF OFFICERS IN COUNTY BOARD —DE FACTO CHAIRMAN.—Where a person, who has previously presided as chairman of a county board, but whose term of office has legally expired, insists upon and does continue to preside, this does not invalidate the proceedings of the board which are otherwise regular. —*State Ex Rel Dugar* v. *Farrier.*—Filed Dec· 19, 1885.—N. J.

EASMENT IN AN ALLEY WAY—MADE BY ADJOINING OWNERS—ADVERSE POSSESSION. —Where the owners of adjoining lots open an alley way between their lots, each contributing one half the land for an alley, and each acquiesse in the same for 20 years, the dedication is then established by adverse possession, and neither one can vacate the alley without the consent of the other.—*Nichols* v. *Wentworth.*—Filed Nov. 24, '85 —N. Y.

ERROR—INSTRUCTIONS WITHOUT PREJUDICE.—Iustructions given by the trial court, which are erroneous, are not ground for reversal where no prejudice results from the instructions.— *Tuck* v. *Singer Mfg. Co.*—Filed Dec. 12, 1885.—Iowa.

EQUITY—EQUITABLE AND LEGAL REMEDY CONCURRENT. — Where an agent, having charge of his principal's business, fraudulently obtains assignments and release, of the principal, and converts the property to his own use, the proper remedy for relief is by bill in equity, although an action at law would lie for the same.—*Webb, Adm'r.* v. *Fuller.*—Filed Dec. 8, 1885.—Me.

EVIDENCE—VARIANCE—COVERTURE.—An action on a promissory note against a party, using his name in full, and the note introduced in evidence signed by the use of the initials only, of the first part of his name, does not constitute a material variance. In such a suit, where one of the defendants, a women, set up the plea of coverture, and that she signed the note as surety for her husband, it is error to exclude evidence of her coverture. — *West* v. *Hays.* —Filed Nov. 23, 1885.— Ind

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EVIDENCE — —LIABILITY FOR MEDICAL TREATMENT RENDERED IN A HOSPITAL.— Where the testimony of one witness on a certain point is excluded and subsequently other witnesses are allowed to testifiy on the same point, it is not ground for error. A person afflicted with a contagious disease and being removed to a hospital for such disease, by order of county authority, is still individually liable for medical treatment received, unless at the time, he expresses his purpose to be treated as a pauper, at the expense of the county.—*Osland* v. *Porter.*—Filed Oct. 10, 1885.—Dak.

EVIDENCE—REPORT OF TESTIMONY ON FIRST, USED AS EVIDENCE ON A SECOND TRIAL.—The testimony of a witness on a former trial, reyorted by a short-hand reporter, may be read in evidence on second trial, if the witness cannot be produced in court-To show that the witness has removed to, and resides in another state, is sufficient grounds for admission of the reported testimony, but such fact must be positively proved.—*Baldwin v. St. L. K. & N. Ry. Co.*—Filed Dec. 18, 1885.—Iowa.

EXECUTORS—FINAL SETTLEMENT OF ACCOUNT.—Where, upon filing of the final account of an executor, there remain in his hands some funds belonging to the estate, if the estate cannot be closed up immediately, the court should grant an extension of time for that purpose. The court cannot order the money paid into court to be subsequently disbursed by the court.—*Estate of McMahon.*—Filed Dec. 14, 1885.—Nevada.

EXECUTION SALE—PRIORITY OF LIENS—POWER OF SHERIFF.—It is the duty of the sheriff to take care of property in his custody and he is entitled to reimbursement of any expenses reasonably incurred thereby. As between two judgment liens the question of priority should be refered to the court.—*Schneider* v. *Sears.*—Filed Nov. 30, 1885.—Oregon.

EXECUTION—LIMITATION OF LIEN—VENDITIONI EXPONAS.—The lien acquired by a levy of an execution upon realty extends seven years, and a sale may be made of the property within one year after the expiration of the seven years. The writ of *Venditioni Exponas*, does not affect the lien; it only compels the officer to proceed to sale of the property.—*Hastings* v. *Mitchell.*—Filed Nov. 14, 1885.—Ill.

EXECUTION—LEVY AND SALE OF TWO PARCELS OF LAND HELD AS ONE FARM.—Where two parcels of land lie side by side, and are held by the owner as one farm, in the levy of an execution, it is optional with the officer whether he has an appraisal of each parcel separately, or one appraisal of the whole farm.—*Hathorn* v *Carson.*—Filed Dec. 8, 1885.—Nd.

EXECUTION SALE—CONTINUANCE OF TENANT IN POSSESSION.—Where one in possession of land, has notice that the land has been sold at judicial sale, and continues thereafter to plant crops. he is not entitled to continue in possession as provided in the Code Sec. 3265.—*Wheeler* v. *Kirkendall.*—Filed Dec. 14. 1888. —— Iowa.

FALSE REPRESENTATIONS — CONTRACT VOID—Where the owner of corporate stock, about to sell some of the same, stated to the purchaser that none of the stock had been sold for less than par value, where in fact it had sold for one-third its par value, and a contract of sale is thereupon entered into, for the sale of some of the stock at par value, the false statements thus made will void the contract. — *Coolidge* v. *Goddard.* — Filed Dec. 9, 1885. — Maine.

FORCIBLE ENTRY AND DETAINER—NOTICE TO QUIT—In an action of forcible entry and detainer the Code provides that three days notice must be given before commencing an action. Where thirty days notice was given it is *held* that it is valid. The defendant cannot complain that more time was given than the statute required.—*Snuxer* v. *Klinkenberg.*—Filed Dec. 12, 1885.—Ia.

FIRE INSURANCE–VOID FOR MISSTATEMENT OF TITLE.—In a policy of insurance wherein was a clause declaring the policy void if the assured did not correctly state his title to the property insured, the assured having in fact only a life estate in the property and representing that he had an absolute title in fee, the policy is declared void.—*Davis* v. *Iowa State Ins Co.*—Filed Dec. 11, '85.–Ia.

FIRE INSURANCE—OCCUPANCY OF DWELLING.—Where it is conditioned in a policy of fire insurance that the policy shall be void if the building is left unoccupied, and where the building,a dwelling honse, was occupied by men who worked the farm,only while so employed, for the purpose of cooking their meals and logding, *held* that such occupancy did not comply with the conditions and intent of the policy.—*Fitzgerald* v. *Conn. F. Ins. Co.*—Filed Dec. 1, 1885.—Wis.

FRAUDULENT CONVEYANCE — GRANTEE ENTITLED TO SUBROGATION.—Where property has been conveyed in fraud of creditors, and the grantee has paid out money to extinguish mesne incumbrances, he is entitled to subrogation to extent of such payments,

or to the rights which the incumbrancer had. —*Yonng* v. *Walsh.*–Filed Nov. 14 1885.–Ill

FRAUDULENT CONVEYANCE—EVIDENCE.—In an action by a creditor to enforce his lien on real estate,which has been mortgaged, on the ground that the mortgage was fraudulently executed, it is competent for the mortgagee to show tha tit was given as security for purchase money. —*Johnson* v. *Pennell.*—Filed Dec. 14, 1885.—Iowa.

FEIGNED ISSUE—CONTRACT—EVIDENCE.—Where a feigned issue is made up,to decide who is claimant to a particular fund, as be tween a junior and senior creditor, the record of the finding in the case is not conclusive evidence in a subsequent suit for breach of contract.—*Howe* v. *1st. National Bank.*—Filed Oct. 5, 1885.—Pa.

FIXTURES—WHAT CONSTITUTES—MACHINERY.—The machinery in a brewery, such as steam engine, beer kettle, pipes, connected therewith, malt-mill, wash tnb, and all gearing and shafting, immediately connected therewith, pass with the reality under a mortgage.—*Schmitz* v. *Scheifele.*—Filed Dec. 2, 1885.—N. J.

GARNISHMENT—PERSONAL APPEARANCE OF GARNISHEE—CORPORATIONS.—In garnishee proceedings the garnishee must appear personally, for oral examination, and cannot send his book keeper or any other person to answer for him. Where a corporation is the garnishee it must of necessity answer by an agent.—*Cornell* v. *Payne.*—Filed Nov. 14, 1885.—Ill.

GARNISHMENT—BEFORE A JUSTICE OF THE PEACE—FINAL JUDGMENT.—In garnishment proceedings, before a justice of the peace, no final adjudication, as to the existence of such indebtness, can be had. The justice may order the delivery of the property. or the payment of the amount owing by the garnishee into court, or may permit the garnishee to enter into a forthecoming bond in lieu of payment or delivery.—*M. P. Ry. Co.* v. *Reid.*—Filed Dec. 4, 1885.—Kans.

GIFTS CAUSA MORTIS—WHAT CONSTITUTES A VALID GIFT.—Where a decedent while on death.bed, a few hours before his death, called his family around him and directed one of those present to proceed to a certain drawer, and take notes and other evidences of value,and distribute them as he directed and after his death the notes and papers are taken from their place and given to the administrator. *Held* that there was no valid gift, that the administrator was entitled to the property.—*Gano* v. *Fisk.*—Filed Nov. 3, 1885.—Ohio.

HIGHWAYS—TITLE TO LAND OCCUPIED BY ROAD—ROAD CALLED FOR BY LINES IN THE DEED.—Where by the description of land in a deed, a road is called for on the line, the owner of the land is entitled to claim to the middle of the roadway. If the road is subsequently vacated he has an absolute title to the middle of the roadway. The street or road must be regarded as appurtenant to the premises.—*Ott* v. *Kreiter.*—Filed Oct. 5, 1885.—Pa.

HOMICIDE—KILLING OF AN OFFICER ACTING UNDER VOID PROCESS.—An attempt by an officer to make an arrest is no provocation and the intentional killing of an officer is murder. Even though the officer be acting under void process, or without process, it is murder. On the question of malice the defendant may show that he had armed himself for another purpose than that of resisting arrest.—*State* v. *Spaulding.*—Filed Dec. 15 1885.—Minn.

HOMICIDE—MISNOMER—WHEN IT WILL NOT VITIATE THE INDICTMENT.—In an indictment for murder, in the indictment the name of the person killed was written "Bernhart" and upon trial the name was given by witnesses "Banhart," "Benhart," "Beanhart," and "Bernhart." *Held* that the names proven were *idem sonans* with that stated in the indictment and the variance was immaterial. Where the person injured or killed, is so well described in the indictment that his indentity cannot be mistaken, the object of the rule has been accomplished.—*State* v. *Witt.* —

Filed Dec. 4, 1885.—Kans.

HUSBAND AND WIFE—RIGHTS OF WIFE IN SEPARATE PROPERTY—RELATION TO CREDITORS.—Under the statute extending the rights of the wife in and to the control of her separate property, in a question between the husband's creditors and the wife, as to whether she or her husband is the owner of certain property,it is to be determined by a preponderance of testimony the same as in other cases. — *Laib* v. *Brandenburg*. — Filed Dec. 18, 1885. — Minn.

HUSBAND AND WIFE—INCOHATE RIGHT OF DOWER— ATTACHING CREDITORS. — Where lands of the husband are sold, by foreclosure of a mortgage, and there remains a surplus after paying the lien, the incohate right of the wife to dower does not attach during the life of her husband. The surplus thus remaining, becomes, and is the property of the husband and may be attached for his debts. *Kaufmvn* v. *Peacock*.—Filed Nov. 14, 1885. —Ind.

INSURANCE—CHANGING A POLICY BY INSERTION OF COMMAS—PROOF OF—Where the punctuation in a policy was alleged to have been changed, so as to change the meaning thereof, such change cannot be proved by producing a former policy, issued to same party on same property against the same class of risks. Where on appeal, the record does not purport to contain all the evidence it will not be presumed that there was no other evidence in support of the findings.—*Boright* v. *S. Fire & Marine Ins. Co.*—Filed Dec. 12, 1885.—Minn.

INJUNCTION—DIVERSION OF AN UNDER GROUND STREAM OF WATER—INSOLVENCY A GROUND FOR INJUNCTION—Where an underground stream of mineral water was found, and the owner expended large sums in making improvements,and advertising the medicinal qualities of the water, and subsequently an adjoining owner sunk a well and tapped the same underground current of water. The original discover of the mineral water, asks an injunction to restrain his neighbor from diverting the stream or in any way interfering with it. *Held* that insolvency of defendant is a sufficient ground for an injunction also *held* that defendant had a right to use the water in its natural flow through his land but has no right to divert it wholely from its course.—*Burroughs* v *Satterlee*—Filed Dec. 8, 1885. — Iowa.

INSANE PERSONS — NO APPEAL FROM COUNTY COURT—HABEAS CORPUS—From the finding of the county court, in an inquisition as to the sanity of a party, there is no right of appeal. The remedy is by writ of habias corpus.—*People Ev Rel Fullerton* v *Gilbert* Filed Nov. 14, 1885.—Ill.

INDICTMENT—AN INCOMPETENT WITNESS ALLOWED TO TESTIFY.—Where an indictment charged that the defendant did "unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors" and defendant moved that the state be required to elect and specifiy some particular sale of some particular kind of liquor, which motion was overruled. *Held* not error. Where an incompetent witness is allowed to testify to a fact, which is abundantly proven by other witnesses who are competent, the admission of the testimony of the witness who was incompetent, is immaterial.—*State* v. *Schmidt*.—Filed Dec. 4, '85—Kans.

INTOXICATING LIQUORS—LIEN ON PREMISES FOR FINE—CONSTITUTIONAL LAW—The statute providing that a judgment, for fine and costs, for a violation of the prohibitory law, shall be a lien on the premises where the liquor has been sold, is held to be constitutional. —*State* v. *Snyder*.—Filed Dec. 4, 1885.—Kan.

IMPEACHMENT OF WITNESS—CROSS-EXAMINATION.—If an irrelevant question is put to a witness his answer cannot be impeached by the party asking the question. Where, however, on cross-examination of a witness, a collateral question is asked, the party may produce the evidence in contradiction of the

collateral testimony.—*Lewis* v. *Steiger*.—Filed Dec. 19, 1885.—Cal.

JUDICIAL SALE—ONE CLAIMING UNDER PURCHASER—STATUTE OF LIMITATIONS—One claiming title, under a purchaser at an execution sale of real estate, may maintain ejectment, and his action is not barred by the statute of limitations, if commenced within five years from the time that he was entitled to a deed, although the sheriff's sale was made more than five years before the commencement of the action.—*Barroilhet* v. *Anspaher*.—Filed Nov. 27, 1885.—Cal.

JUDGMENT—SERVICE OR APPEARANCE ESSENTIAL—APPEARANCE WITHOUT AUTHORITY VOIDS JUDGMENT.—Where judgment is obtained in a cause where there has been no service on defendant, but where an appearance has been entered by attorney without authority, the judgment is void. In Griggs v. Gear 3 Gilman 2 it was *held* that chancery would aford relief where the party's appearance had been entered without authority.—*Anderson* v. *Hawke*.—Filed Nov. 14, '85--Ill

JUDICIAL SALE— AN AGREEMENT NOT TO BID AGAINST CERTAIN PARTY AT SALE.—Where parties in interest agree, among and with each other, that one of their number may bid, at a judicial sale of property, without competion, if he will bid it sufficiently high to cover his own and all other claims against it. *Held* not to be against public policy, where no fraud was practiced on any one, and such a purchase will be sustained.—*Meely* v. *McClure*.—Filed Oct. 19, 1885.—Pa.

JUDGMENT BY CONFESSION—VACATION OF.—On an application to vacate a judgment, entered by confession, unless some evidence is produced to show that such judgment was confessed by authority of defendant, it is not error for the court to vacate the judgment and discharge the lien. If it is shown that the judgment was confessed by authority of defendant the lien should be preserved, although the judgment be opened and the defendant let in to a defense,—*Stein* v *Good*—Filed Nov. 14, 1885.—Ill.

JUDGMENT BY DEFAULT—MOTION TO SET ASIDE.—AFFIDAVIT.—The court may fix a time for filing pleadings, other than the time fixed by the code, Sec. 2599, and parties are bound to take notice of the rule. A motion to set aside a judgment taken by default, will be denied, unless supported by an affidavit of defense.—*McGrew v. Downs*.—Filed Dec. 15, 1885. —Iowa.

JURISDICTION OF DISTRICT COURT—DIVISION OF DISTRICT—When any suit is commenced and pending except where the United States is a party, although the district be divided before judgment is rendered, the district court has jurisdiction to try and determine the same.—*Murphy* v. *Murphy*.—Filed Dec. 12 1885.—Dak.

LANDLORD AND TENANT—JUDGMENT IN SUMMARY PROCEEDINGS CONCLUSIVE—Where premises are owned by two or more parties and summary proceedings are instituted by one of the landlords in his own name, for recovery of the premises, as against the tenant, unless the non joinder of the other landlord is objected to at the time, the judgment in the case is final as between the tenant and all the owners.—*Nemetty* v. *Navlor*.—Filed Nov. 25, 1885.—N. Y.

LANDS TAKEN BY RAILWAY COMPANY—MEASURE OF DAMAGES—Where lands are taken, for use of a public corporation, the measure of damages is the actual market value in cash, and if land be damaged by the corporation, but not taken, the measure of damages is the difference between the market value of the lands before and after the construction of the works, by the corporation. In determining the measure of damages, it is proper for the jury to consider the purposes for which the land was used and the actual value to the owner for that particular use.—*Dupies* v. *C. & N. W. Ry. Co.*—Filed Nov. 14, 1885.—Ill.

LIBEL—EVIDENCE IN MITIGATION OF DAMAGES—ARGUMENTATIVE INSTRUCTIONS.—In an action for slander, defendant may testifiy to his belief in the truth of the charge, at the time of using the libelous language, in mitigation of damages. Instructions that are argumentative on the weight of the evidence, are erroneous.—*Morris* v. *Lachman.*—Filed Nov. 26, 1885.—Cal.

LIBEL–CALLING AN ATTORNEY A "SHYSTER'—In an action for libel, where it was charged that defendant had called plaintiff a *shyster*, the plaintiff in his answer denied that defendant was or ever had been an attorney at law. *Held* that as this answer raised an issue on this point, it was a material issue in the suit. "Shyster" is defined by Webster as a trickish knave." One who carries on any business, especially a legal business, in a dishonest way."—*Gribble* v. *Pioneer Press Co.*—Filed Dec. 7, 1885.—Minn.

LIFE INSURANCE—PAYABLE TO WIFE—CANNOT BE REACHED BY CREDITORS OF HUSBAND'—A life insurance policy, written upon the life of the husband and payable to his wife, is not assignable and cannot be reached by the husband's creditors. Where the creditor obtains a judgment against the husband and wife jointly, this does not enable him to compel an assignment of the policy.—*Barrow* v. *Brummer.*—Filed Nov. 24, '85–N Y.

LIBEL—SUFFICENCY OF COMPLAINT.—In an action for libel, where the defendant is charged in the following words, "on the first day of march 1883 as the plaintiffs are informed and believe, at the county of Stanislaus the defendant addressing William Walker spoke, in the presence of Saul Walker and Geo. W Dewell, the following words to wit;"—here setting out the words spoken.—*Held* that the allegation is sufficient.—*McKinney* v. *Roberts.*—Filed Dec. 18, 1885.—Cal.

MANDAMUS—PAYMENT OF JURY'S AND REPORTFR'S FEES—STAY OF PROCEEDINGS.—In a trial in the superior court, the court has power to order a stay of proeeedings until the plaintiff pays the jury fees and fee of the reporter. Where proceedings are stayed on these grounds, *Mandamus* to compel the judge to proceed in the case, will not lie.—*Rhodes* v *Spencer*—Filed Dec. 18 '85.—Cal.

MASTER AND SERVANT—INJURY TO A SERVANT BY NEGLIGENCE OF CO-SERVANT—The statute enacted in 1879 making railroad companies liable for injuries to an employe, by reason of negligence of a co-employe, is still in force, but it must be interpreted under the general rule applicable to contributory negligence. Where one servant or emyloye, knowing that a co-employe is habitually negligent or that the machinery with which he works, is defective, and continues to work, he is presumed to have voluntarily assumed the risk of such incompetency and is guilty of that degree of contributory negligence which will bar his recovery.—*Kansas P Ry Co* v *Peavey*—Filed Dec 4 '85—Kans.

MASTER AND SERVANT—NEGLIGENCE OF FELLOW SERVANT—LIABILITY OF MASTER.—A line-man was injured while putting up wires for a telegraph and telephone company by the falling of a pole which had been carelessly set. *Held* that the party or servant who set up the pole and the one who put up the wires, were not fellow servants in that sense which would bar recovery.—*Kelly* v. *Erie T. & T. Co.*—Filed Dec. 5 '85—Minn.

MALICIOUS PROSECUTION–PROBABLE CAUSE.—Malice may be inferred from want of probable cause. In Sherburne v. Rodman 8 N. W. Rep. 414, (Micn.) it is held that to sustain an action for malicious prosecution the want of probable cause and malice must concur.—*Heap* v. *Parish.*—Filed Nov. 23, 1885.– Ind.

MORTGAGOR— INSOLVENT — INJUNCTION TO RESTRAIN SALE UNDER THE MORTGAGE.—Where an injunction is asked to restrain the sale of land under a mortgage, where the bill does not charge that the mortgage "was executed with intention to defraud or to give

undue advantage" the injunction will not be granted.—*Ensor, Trustee* v. *Keech.*—Filed Dec 10 1885—M———d.

MORTGAGE—IN EXCESS OF THE REAL DEBT—PRESUMPTION OF FRAUD—Where a mortgage is taken for a greater sum than the real debt, it raises a presumption of fraud, and it is incumbent on the mortgagee, to show that the mortgage was taken in good faith. A chattel mortgage which does not include all the mortgagor's property will not be held to be a general assignment.—*Carson* v *Byers* —Filed Dec. 14, 1885.—Iowa.

MUNICIPAL CORPORATION—POWER OF ASSESSMENT FOR IMPROVING STREETS—ROADS WITHIN CORPORATE LIMITS BUT NOT IMPROVED AS STREETS.—Where the corporate limits of a municipality have been extended, the jurisdiction of the corporation attaches over roadways thus acquired, but it cannot assess the abutting property for expense of keeping the roadways in repair, unless it improve them as streets, the same as other streets in the city. — *Heiple* v. *East Portland.* — Filed Dec. 7, 1885. — Oregon.

MUNCIPAL CORPORATIONS—BUILDINGS EXEMPT FROM TAXATION.—Buildings owned by municipal corporations and appropriated to public uses, are exempt from general taxation. The general statute relating to taxation of real estate relate to other property than that owned by municipal corporations.—*Camden* v. *Camden Village.*—Filed Dec. 1 '85.—Me.

MUNICIPAL CORPORATION—AUTHORITY OF TOWN OFFICERS TO PROSECUTE AN ACTION AT LAW.—The supervisor or the town auditors have no authority to prosecute an action at law in behalf of the town. They may prosecute for penalties and forfeitures, except otherwise directed in town meeting. In order to prosecute an action, the people of the town alone are authorized to raise funds for the expenses of such litigation.—*Town of Kankakee* v. *K. & I. Ry. Co.* —Filed Nov. 14, 1885.—Ill.

MUNICIPAL ASSESSMENT—CONSTRUCTION OF SEWERS BEFORE ORDINANCE IS PASSED.—The municipal officers have no authority to construct a sewer and subsequently pass an ordinance assessing the property to pay for the same. The officers of a city may be enjoined from enforcing an ordinance which is void.—*Appeal of Ha.per.*—Filed Oct. 5, 1885.—Pa.

MUNICIPAL CORPORATION—CONSTRUCTING A SEWER—ASSESSMENT OF ABUTTING PROPERTY.—A city, constructing a sewer in an improved street, cannot assess the abutting property for the expense of the same. It must pay the expense out of the general fund.—*City of Burlington* v. *Palmer.*—Filed Dec. 15, 1885.—Iowa.

NEGOTIABLE PAPER—MORTGAGE CLAUSE.—A promissory note containing a mortgage clause, conditioned for the payment of the same, is not thereby rendered non-negotiable.—*Bank of Carroll* v. *Taylor.* —Filed Dec. 12, 1885. — Iowa.

NEW TRIAL—NOTICE OF—WAIVER—PRE-EMPTION.—In the service of notice of intention to apply for a new trial, after the limitation of time for such notice has expired, if the adverse party do not object at the time of service or settlement of the statement, he is held to have waived his right to object. Where lands have been listed to, and a patent granted by the state, an adverse party, who claims title to the land under the pre-emption law of the United States, must show that he was in privity with the Uuited States when the lands were listed to the state. — *Schiefferly* v. *Tapia.* — Filed Dec. 16, 1885. — Cal.

NEGOTIABLE INSTRUMENTS—PAYABLE AT A PARTICULAR PLACE—OBLIGATION OF PAYOR.—Where a promissory note is payable at a particular place, the payor must be at the place at the time specified, ready to pay the same, otherwise he cannot avoid the consequences of default in payment, and if the payee be not present to receive payment,

the payor must deposit the funds for the purpose of payment.—*Adams, Adm'r* v *Rutherford.*—Filed Dec. 3, 1885.—Ore.

NOTE PAYABLE ON DEMAND—LIABILITY OF ENDORSER—PAYMENT BY ONE OF THE MAKERS—To fix the liability of an endorser, on a promissory note, payable on demand, it is necessary for the holder to show a demand made, of the makers of the note, and he must be able to deliver the note to the endorser, unimpaired, upon his payment of the same. Payment by one of the makers of a joint note does not renew the note as to the other makers.—*Shutts* v. *Fingar.*—Filed Nov. 24, 1885.—N. Y.

OFFICERS SALARIES—NOT HELD BY CONTRACT OR GRANT—LEGISLATURE MAY AT ANY TIME CHANGE OR IMPOSE NEW DUTIES—In enacting laws regulating or arranging the salary of public officers, where the office is created by the state, the laws must be general. With the exception of this limitation, and such limitations as are prescribed in the constitution, the legislature has entire control of such offices and officers.—*Miller* v. *Kister.*—Filed Nov. 30, 1885.—Cal.

OVERSEER OF THE POOR—AUTHORITY OF TO CALL A PHYSICIAN—Ordinarily, the township trustee has no authority to call a physician to attend a pauper, other than the one employed by the county, but if the one regularly employed refuses to attend a sick person, or is absent, or unable to do so, the trustee may employ another physician.—*Washburn* v *Commissioners of Shelby Co.*—Filed Dec. 8, 1885.—Ind.

OFFER TO SUBSCRIBE FOR RAILROAD STOCK—REVOCATION—An offer to subscribe for railroad stock, although made in writting, conditioned that the road shall be constructed along a certain route, may be revoked, at the option of the subscriber, at any time prior to the acceptance of the same by the company. Death of the subscriber works a revocation of the same by operation of law.—*Wallcae* v. *Townsend.*—Filed Nov. 17, 1885.—Ohio.

ORAL ASSIGNMENT—REQUISITES OF.—A debt due on account may be assigned orally if there is a valuable consideration passes. But there must be at least a constructive delivery of the same. The facts must show clearly the intention of the assignor.—*White* v. *Kilgore.*—Filed Dec. 9, 1885.—Me.

MASTER AND SERVANT—INJURY TO SERVANT THROUGH ACTION OF FELLOW SERVANT.—It is the duty of a master to furnish suitable and safe appliances in the nature of machinery for the use of employees, and failing to do so he is liable for damages for injuries to an employe. The fact that an employe might use the imperfect appliance with safety, by using great care, does not relieve the master from the consequence of not furnishing proper and suitable machiney.—*Stringham* v *Stewart.*—Filed Nov. 24, 1885. N. Y.

PARTNERSHIP—DISSOLUTION BY THE BANKRUPTCY OF ONE OF THE FIRM—INTEREST OF A RETIRING PARTNER IN AN UNCOMPLETED CONTRACT.—Where a partnership is dissolved, by death, or by the bankruptcy of one of the partners, and the business is carried on, by the solvent or surviving partner, the deceased or retiring partner, is entitled to share in the profits of unfinished contracts, in hand at the time of dissolution.—*King, Jr.* v. *Leighton.*—Filed Nov, 24, 1885.—N. Y.

PLEADINGS—NEGLIGENCE A QUESTION OF FACT.—Points in the declaration, which might have been taken advantage of by demurrer, but were not, are cured by verdict, and judgment. It is the province of the jury to determine the question of negligence from the evidence. An instruction which points out the duty of one party, and wholly ignores the duty of the other, is one-sided, and should be refused.—*L. S. & M. S. Ry. Co.* v. *O'Connor.*—Filed Nov. 14, 1885.—Ill.

PROMISSORY NOTE—CONSIDERATION—OF JUDGMENT.—Where one note is surrendered and new one taken, the consideration may be shown by oral testimony. Where judgment has been entered, upon a warrant to confess judgment, and it is sought to defend agsinst the judgment thus confessed, on the ground of fraud, the fraud must be affirmatively proved.—*Hips v. Wordle.*—Filed Oct. 26, 1885.—Pa.

PUBLIC LANDS—COMPLIANCE WITH THE PRESCRIBED TERMS OF ENTRY.—Where a party has complied with all the requirements which entitle him to a patent for a tract of land, he is held to be the equitable owner thereof, and a patent issued to another for the same is void, unless the claim of the former be set aside.—*Fowler v. Seott.*—Filed Dec. 1, 1885.—Wis.

PRINCIPAL AND AGENT—RATIFICATION OF AN UNAUTHORIZED ACT.—Where a party has received funds of another, for deposit in bank, and deposits it, taking a certificate payable to himself, and the bank knowing who is the real owner of the funds, and when objection is made by the owner, both to the bank and the agent, but no effort is made for two or three years to have the matter rectified, and the party holding the certificate becoming insolvent, presents the certificate and it is paid, it will be presumed that he had authority to receive payment of the same, and the owner cannot recover from the bank.—*Dewer v. Bank of Montreal.*—Filed Nov. 14, 1885.—Ills.

PRINCIPAL AND AGENT—PERSONAL LIABILITY OF AGENT.—Where the jury find that a note and mortgage were given for borrowed money, by one purporting to act as agent, solely for, and on account of his principal, it is error to render personal judgment against the agent. An attorney in fact, cannot mortgage his principal's land to secure a debt of his own.—*H. S. & L. Soc'y v. Moore.*—Filed Nov, 30, 1885.—Cal.

PRINCIPAL AND AGENT—EMBEZZLEMENT BY AGENT—REMEDY.—Where an agent has embezzled funds of his principal and invested it in property, the principal may have recourse on the property thus purchased, if the purchaser has had notice, or if there has not been a good and valid consideration passed, and a recovery may be had on parol evidence, which might have been excluded by objection, if otherwise sufficient.—*Riehl v. Evansville Foundry Ass'n.*—Filed Nov. 24, 1885.—Ind.

PARTITION—CONCLUSIVENESS OF JUDGEMENT—TITLE ACQUIRED PENDING PARTITION PROCEEDINGS—A judgment in partition is conclusive only on the matter of severing the unity of possession; it does not modify or affect the title by which the land is held in common before partition. If a party acquires an indisputable title by deed during partition proceedings, he must disclose the same or he will be barred by the judgment.—*Cristy* v. *S. V. Waterworks.*—Filed Nov. 25, 1885.—Cal.

PARTNERSHIP—NOVATION OF CONTRACT.—Where an individual enters into a contract and subsequently becomes a member of a firm, and the firm becomes the beneficiary of, and adopts the contract as their own, it becomes thereby the contract of the firm. Story on Part. Sec. 153, says "Indeed it may be generally stated, that in all cases of this nature, the primary consideration is not so much to ascertain between what parties the original contract was actually made, as it is to ascertain whether there has subsequently been, with the consent of all parties, any change or extinguishment of that contract."—*Lucas v. Coulter.*—Filed Nov. 24, 1885.—Ind.

PLEADING—NEGLIGENCE—MAINTAINING AN EXCAVATION BETWFEN THE STREET AND A BUILDING.—The effect of a demurrer to a complaint is an admission of all facts well pleaded in the complaint. One who maintains an unguarded excavation between his building and the street, is liable for injuries

arising therefrom.—*Crogan v. Schiele.*—Filed Oct. 26, 1885.—Conn

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POWER OF COURTS—POWER OF CODIFIER TO AMEND LAWS.—Where the legislature passes an act declaring certain acts an offense against the laws, with no provisions imposing a penalty, the court caunot supply the omission and impose a penalty, neither can the codifier or the code commissioners amend the law. The legislature cannot delegate the power to any one to amend an act.—*State v. Gaunt.*—Filed Dec. 14, 1885.—Oregon.

POWERS OF THE LEGISLATURE—COUNTY TAXES PAYABLE IN COUNTY WARRANTS.—The act of the legislature, making taxes payable only in cash, is constitutional and valid, but it cannot deny the right to receive county warrants which issued prior to the enactment, in payment of county taxes. County warrants are assignable and the holder may maintain an action on them in his own name subject to any set-off which would have been available against the original payee.—*People v. Hull.*—Filed Dec. 24, 1885.—Col.

PENAL CODE—ABDUCTION—EVIDENCE.—A conviction for abduction cannot be had, unless a "taking" is shown, and the purpose was for prostitution. Where a female voluntarily entered a disreputable place and the keeper subsequently concealed the fact of her being there, no conviction for abduction could be had.—*Piople v. Platte.*—Filed Dec. 8, 1885.—N. Y.

PROMISE—NUNDUM PACTUM—WRITTEN CONTRACT.—Where a real estate agent contracted for a given sum, to furnish a customer who would buy or exchange certain property, and did find a customer who entered into a contract for an exchange, the written contract being thereby executed, on the part of the agent, he subsequently agreed, verbally, that he would not insist on payment of the agreed commission if the contract of exchaege was not carried into effect. *Held* that recovery might be had on the written contract, notwithstanding the verbal agreement, as the verbal agreement could not vary the terms of the written contract.—*Little v. Rees.*—Filed Nov. 21, 1885.—Minn.

PRINCIPAL AND AGENT—BOND OF AGENT—SURETY.—Where an agent has been guilty of dishonest practices, and he executes a bond for his future good conduct, with a surety, if the principal to whom the bond is given, does not disclose the fact of the agents former misconduct, to the surety, the surety is thereby released from liabilty on the bond. The mere fact of his silence is a fraud on the surety which will vitiate the bond.—*G. F. & L. Ins. Co. v. Thompson.*—Filed Dec. 21, 1885.—Cal.

PLEADING—ANSWER—FORM OF ACTION—VARIANCE.—Where the defendant answers that he is not indebted to the plaintiff as alleged in the complaint, "or otherwise" it is equivalent to saying that he is not in any manner indebted to the plaintiff. Such answer, after judgment, will be construed in aid of the judgment.—*Kiug v. DeCoursey.*—Filed Dec. 18, 1885.—Cal.

PLEADING—DECLARATION — GUARDIAN'S BOND.—In an action on a guardian's bond the declaration should allege that the amount has been specifically declared by decree of the probate court. A guardian's bond is not changed from a statutory bond to a common law bond, because it contains conditions not required by statute.—*McFaddeu v. Hewitt.*—Filed Dec. 16, 1885.—Maine.

PRACTICE—QUESTION OF APPEAL.—STAY OF EXECUTION.—The simple taking of an appeal, when there is no stay of execution, does not call into exercise any judicial act of the court, and the trial judge cannot declare an order or judgment non-appealable. When the appellant complies with the requirements for a stay of execution, his right to a stay is absolute.—*Daniels v. Miller.*—Filed Dec. 18, 1885.—Col.

PRACTICE — RE-HEARING— FRAUDULENT CONVEYANCE.—An application for a rehearing, is a matter in the discretion of the court, and is not appealable. A deed, made to delay, hinder or defraud creditors,is fraudulent and will be set aside, but the burden of proving fraud, rests on the party alleging it.—*Zimmer v. Miller.* — Filed Nov. 20, 1885.—Md.

PROMISSORY NOTE—RELEASE OF SURETY BY EXTENSION OF TIME.—Where the holder of a note agrees to extend the time of payment, without any consideration, such agreement will not release the surety on the note. —*Byers v. Harris.*—Filed Dec. 15,1885.——Iowa.

PERSONAL JUDGMENT AGAINST MORTGAGOR —COPY OF NOTE.—In an action of foreclosure, where a personal judgment is sought against the mortgagor, a copy of the note evidencing the debt, must be set out or filed with the complaint.—*Roche* v. *Mofflit.* Filed Dec. 29, 1885.—Ind.

PROCEDURE——ANNEXATION OF TERRITORY TO A CITY—LAND NOT PLATTED.—Where territory contiguous to a city, is laid off in lots, it may be annexed to the city by resolution of council, but where the land, sought to be annexed, is not platted, an order must be obtained from the county comissioners authorizing the annexation.—*City of Delhi* v. *Startzman.*—Filed Dec. 29, 1885.—Ind.

PRACTICE— EJECTMENT— PUBLIC LAND GRANT.—The essential points in a complaint in ejectment, are that it aver seizure of the plaintiff's possession of defendant at the time of commencing the action, and a withholding of possession. A grant of land by congress, is a conveyance of the highest character, and the transfer of title takes effect when the conditions of the grant are complied with by grantee.— *N. P. Ry. Co.* v. *Lilly.*—Filed Jan'y 7, 1886.—Mon.

PARTITION OF LAND HELD BY TENANTS IN COMMON—WHAT BILL FOR PARTITION MUST NCLUDE.—One tenaut in common of lands, may have his portion set off by partition, although it may not be to the interest of all the tenants to have their own portion set off. *Bird J.* in the opinion says "It is plain that part can be divided and part sold. I think that the interest of one tenant in common may be set sff to him in land, even though the balance of the land is held by so many as tenants in common, that it will be to their interest to order a sale of their shares."—*Jacksonv.Beach.*—Filed Oct. 28, 1885.—N.J.

PETITION TO CANCEL A JUDGMENT—INSANE PERSONS.—In a proceeding to annul a judgment on the ground of insanity, it is proper for the court to instruct the jury that the only question they are called upon to decide, is that of the sanity of the person whose mental condition is under investigation. One who brings an action for the dismissal of a guardian, if unsuccessful in the action. is liable for the costs. — *Cochran v. Amsden.*—Filed Dec. , 18, 1885.—Ind.

PLEADING—DAMAGES FOR MALICIOUS PROSECUTION—PROMISSORY NOTE.—Where a copy of a note sued on, is filed with the declaration or complaint, it is not essential to aver in the complaint that the note is due. Damages for malicous proseeution cannot be set-off against a promissory note.—*West* v. *Hayes.*—Filed Dec. 19, 1885.—Ind.

PETROLEUM LANDS—LEASHOLD MAY BE MORTGAGED.——Petroleum lands may be called mining lands, and as such, lessees may mortgage their terms. Property embraced in the leashold may be followed by the mortgagés, and seized wherever it may be found, and an action may be maintained for taking the same.—*Gill* v. *Weston.* —Filed Oct. 5, 1885.—Pa.

RAILROADS—OBSTRUCTING AN ALLEY-WAY BY LAYING A DOUBLE TRACK.—Where a railroad company has obtained the right of way through an alley, to lay a track, and have paid the damages assessed for the same, and snbsequently lays a second track which ob-

structs the alley-way, an owner of property suffering damages thereby, may have an action for damages for the same.—*Wilson v. D. M. & O. Ry. Co.*—Filed Dec. 12, 1885.—Iowa.

RELEASE OF CLAIM—FAILURE TO READ—ESTOPPED.—A party who has a claim for damages for personal injury, and signs a release of the same, without reading it, relying upon statements orally made at the time as to its contents, in the absence of fraud, he is subsequently estopped from claiming that the release is not binding upon him.—*Wallace v. C. St. P. M. & O. Ry. Co.*—Filed Dec. 12, 1885.—Iowa.

ROADWAYS—APPEAL FROM COMMISSIONERS TO SUPERVISORS.—An appeal may be taken from the commissioners of highways, concerning the laying out of a road, to the supervisors, on the grounds of jurisdiction, or on grounds affecting individuals, and when such an appeal is taken, it vacates the decision of the commissioners, aud is in effect a new trial of the issues.—*Poole v. Breeze.*—Filed Nov. 14, 1885.—Ills.

RAILROADS—CONSTRUCTION OF OVERHEAD BRIDGES.—Where a railroad company constructs a bridge over its track, so low that brakemen cannot stand erect on top of the cars in safety, while passing under it, and a brakeman is injured by coming in contact with the bridge, he having no knowledge that it is too low, the company is liable for damages for the injury.—*B. O. & C. Ry. v. Rowan.*—Filed Nov. 24, 1885.—Ind.

RAILROADS—IN HANDS OF RECEIVER—OBLIGATION TO FENCE TRACK.—Where the duty to fence its track is imposed on a railway company, it is not relieved from the consequences of not doing so, by the fact that the railroad is in the hands of, and managed by a receiver. When the property and franchises of a road are in the hands of a receiver, and under the management of the court, the corporation msy still exercise a general control, although it may not interfere with the management, as exercised by the receiver.—*O. & M. Ry. Co. v. Russell.*—Filed Nov. 14, 1885.—Ills.

RELINQUISHMENT OF DEBT—DURESS BY MENACE.—Where a debtor finds his creditor in a disturbed condition of mind, and takes advantage of the circumstances to secure a relinquishment of the debt by menace, it amounts to duress, and the debtor cannot plead such a relinquishment as a defense.—*Parmentor v. Pater.*—Filed Dec. 14, 1885.—Oregon.

RAILROAD COMPANY—NEGLIGENCE—STARTING TRAIN BEFORE PASSENGERS GOT OFF.—Where a husband, expecting the arrival of his wife at the depot, got aboard the train to assist her off, and being delayed in finding her a few moments, before he got off, the train started and in getting off he was injured, *Held*, that as the conductor and employes of the train did not know of his presence, and as all passengers intending to get off had done so, the company was not liable for damages on the ground of negligence.—*Griswold v. C. & N. W Ry. Co.*—Filed Dec. 25, 1885.—Wis.

READING INDICTMENT TO PRISONER—COPY FURNISHED—FURNISHING LIST OF JURORS AND WITNESSES.—Where a copy of the indictment is furnished to the defendant, it is not necessary that the indictment should be read to him upon arraignment. The copy of indictment should include the names of the witnesses on whose testimoy the indictment was found. The list of petit jurors, should be furnished to the prisoner before trial, but need not be furnised before arraignment.—*Minich v. People.*—Filed Dec. 4, 1885.—Colo.

ROADWAYS—DAMAGES FOR INJURIES RECEIVED BY DEFECT IN ROADWAY.—The town is liable for damages for injury caused by defect in a highway and, where a horse is injured, damages for the loss of the use of the horse for a time, may be included. If the character of the damage and the place where

it occurred, are sufficiently described to give a clear idea of the injury and to identify the place where it occurred, it is sufficient.—*Brown v. Town of Southbury.*—Filed Dec. 16, 1885.—Conn.

RAILROAD COMPANY—PRIVATE CROSSING—INJURY TO STOCK—DAMAGES.—Where a party is permitted to make a private crossing of a railroad track, for his own convenience, if his stock stray upon the track at said crossing, the company is not liable for injury to said stock, but if the stock belonging to another, stray upon the track by way of this private crossing and are injured or killed, the company is liable for damages. Where the controlling facts are not traversed, it is not error for the court to instruct the jury what verdict to render.—*Wabash Ry. Co. v. Williamson.*—Filed Dec. 9, 1885.—Ills.

RAPE—ASSAULT WITH INTENT TO COMMIT—SIMPLE ASSAULT.—An instruction that the crime of rape included the crime of an assault with intent to commit rape, and also the crime of a simple assault, and afterwards submitting the issue of assault and battery, is not erroneous.—*State v. Mitchill.*—Filed Dec. 17, 1885.—Iowa.

RAILROAD AID TAX——UNITED VOTE OF TOWN AND AN INCORPORATED VILLAGE IN THE TOWN.—Where the citizens of a town vote upon the question of granting aid in the construction of a railroad, and there is an incorporated village within the town, the citizens of the village may participate in the election. Where such tax is about to be voted upon, and one or more persons canvas the citizrns soliciting them to vote for the proposed tax, and promising certain one's that if they will so vote, there will be refunded *to them* fifty per cent ofthe amount of taxes they pay, if such tax be voted, the election will be declared void by reason of such promises.—*C. M. & St. P. Ry. Co.* v. *Shea.*—Filed Dec. 15, 1885.—Iowa.

RAILROAD CORPORATION——FIDUCIARY CHARACTER OF DIRECTOR.—A director in a railroad corporation, purchases a tract of land, near which the right of way for the railroad track had been located, and thereupon he offered the company of which he was a director, the right of way through his land, but his offer was refused. Subsequently the company decided to change the route and to run the track through his land. Some three years after the road was built, the company and the owner of the land referred to, failed to agree upon the amount of damages for the right of way. The company thereupon bring an action to compel an absolute conveyance of the tract of land to it on the ground that the purchaser was a director of the company at the time of purchase, and that the land was purchased for the company. *Held* that the bill could not be maintained.—*Sandy River Ry. Co. v. Stubbs.*—Filed Dec. 14, 1885.—Maine.

REFORMATION OF A DEED—PAROL EVIDENCE.—Where the description of property in a deed is so indefinite as to leave it uncertain what property was intended to convey, parol testimony may be received to show what property was intended. In an action to remove a cloud from a title, if the plaintiff's title is put in issue, he must prove title in himself.—*Ritchie v. Pease.*—Filed June 13, 1885.—Ills.

REDEMPTION OF LANDS SOLD ON EXECUTION—CONDITIONS OF.—Where land has been sold on execntion, the judgment debtor may redeem the same, at any time within six months after the sale, by paying to the purchaser the purchase money, together with two per cent per month interest on the same, and all assessments of taxes or other assessments which the purchaser may have paid on the same.—*Campbell* v. *Oaks.*—Filed Dec. 22, 1885.—Cal.

RAILROAD COMPANIES—PRESUMTION OF NEGLIGLNCE—EVIDENCE.—Where a passenger train is thrown from the track, there is a presumtion of nepligence on the part of the company, and the burden of proof is on

the company, to show that there was no negligence in regard to the management of the train, or the condition of the track. A physician may testify as to expressions of suffering as the result of an injury, if made to him in the course of medical treatment, even though such expressions are made after a trial for damages for the injury has commenced.—*C. C. C. & I. Ry. Co.* v. *Newell.* —Filed Dec. 12, 1885.—Ind.

RAILROAD COMPANY—ACTION FOR PERSONAL INJURY—PLAINTIFF MUST ALLEGE NEGLIGENCE.—In an action for personal injury, which occurred while getting off the cars, the plaintiff alleged in his complaint that the platform at the station was "out of repair" and "wholly unsuitable for the reception of passengers," but did not allege negligence on the part of the company. *Held* bad on demurrer.—*Penn. Co.* v. *Marion.*—Filed Dec. 16, 1885.—Ind.

REFERENCE—ENTRY OF JUDGMENT BY CLERK,—Where a reference is ordered and in the order of referance it is provided that judgment shall be entered in accordance with the referee's report, the clerk of the court is authorized to enter judgment upon the filing of the report, without further order of court.—*Bowie v. Borland*—Filed Dec. 23,1885.—Cal.

REMOVAL OF EXECUTORS—POWER OF ORPHANS COURT—APPEALS.—The orphans court can only remove an executor or administrator for certain specified causes, and the defendant must have an opportunity to be heard against the motion to remove. The causes for which he may be removed are first, when he fails to make his report as required by statute, and second, where he sells or removes any property belonging to the estate without the permission of the court being first obtained. An appeal from the orphans court to the court of appeals is not final.—*Levering v. Levering.*—Filed Dec. 17, 1885. Md.

RAILROAD COMPANIES—DISCRIMINATION IN RATES—POWER OF COURTS TO CONTROL. —A railroad corporation cannot lawfully discriminate in freight tariff and give to one lower rates that another, on the same class of freight. Where a contract for freight is based on the quantity shipped, allowing a shipper of large quantities lower rates than the shippers of small quantities, it is illegal and against public policy. Such acts of discrimination may be enjoined by the stae. courts.—*Scofield v. L. S. & M. S, Ry. Co* —Filed Dec. 15, 1885.—Ohio.

SHERIFF'S DEED—VOID—COLOR OF TITLE. —A sheriff's deed, although invalid or actually void, if it is good in form, professes to convey the property and is duly executed, will give color of title. Where one cotenant, assumes to convey the entire land and so describes the land by by metes and bounds, it will give to the grantee color of title. What constitutes color of title is a question of law, the question of adverse possession under it, is a question of fact.—*Packard v. Moss.*—Filed Nov. 27, 1885.—Cal.

SALE OF LUMBER—SURVEY—STATUTORY REQUIREMENTS.—A vendor of lumber and shingles, cannot recover the price thereof, unless there be a survey of it by the proper officr. The leading case on this point, is *Durgin v. Dwyer*, 68 Me. 143. Other cases which make a distinction as against this rule, are *Abbott v. Goodwin*, 37 Me· 203; and *Rogers v. Humphrey*, 39, Me. 382. In this case, ruling was had against the defendant to which he alieged exceptions, and on appeal the exceptions are sustained.—*Richmond v. Foss.*—Filed Dec. 12, 1885.—Me.

SELLING INTOXICATING LIQUORS WITHOUT LICENSE—INDICTMENT.—In an indictment for selling liquor without license it is not necessary to allege that the defendant had no permission to do so, nor is it necessary to prove the want of qualification to obtain a license. It is no defense to a prosecution for selling liquors to be drank on the prem-

ises, to show a license to sell in quantities. —*People v. Jefferson.*—Filed Dec. 15, 1885.N. Y.

SALE OF WOOL—SUCJECT TO GRADE OF INSPECTION.—Where goods are puschased subject to inspection, and the inspector departs from the usual mode of inspection, and the goods are delivered to the purchaser, and retained by him, he is bound for the purchase price, having waived the wrongful inspection, by receivnig and retaining the goods.—*Mehereen v. Ball.*—Filed Dec. 19, 1885.—Cal.

STATUTE OF LIMITATIONS—RE-TRIAL ON AMENDED COMPLAINT.—Where, upon appeal, a case is remanded for new trial, it is not the commencement of a suit, although the original petition be amended and the statute of limitation connot be pleaded on the re-trial where the original petition was filed within the limit of the statute.—*Myers v. Kirt.*—

SALE—WARRANTY—WAIVER OF NOTICE. —Where a party purchases a threshing machine, which the seller warranted to work properiy, and after trial the seller sent a mechanic to make some change or repairs, and afterwards the machine not working satisfactorily, the purchaser returns the machine and demands the money paid on the same, *Held*, that the seller could not recover the balance due on the contract; that by sending a man to repair the machine he waived the right to notice of intention to rescind; and that the purchaser having returned the machine, was entitled to a return of money paid.—*Davis v. Butrick.*—Filed Dec. 17, 1885.—Iowa.

SUPPLEMENTARY PROCEEDINGS—DISCRETION OF THE TRIAL COURT.—The examination of a defendant, in supplementary proceedings, is largely in the discretion of the court, and an appellate court will not disturb the judgment unless it clearly appears that that there has been an abuse of the discretion and injurtice done.—*Heilbrouner v. Levy.*—Filed Dec, 23, 1885.—Wis.

SUNDAY—DOCKET ENTRY OF JUDGMENT. —Where by mistake a docket entry of judgment is made as of sunday, when in fact it was not so rendered, the judgment may be amended at any time. Where the error is one of substance, the judgment cannot be amended after the expiration of term at which it was rendered, but where the error is one of form only. it may be amended at any time.—*Ecker v. First Nat'l Bank.*—Filed Nov. 20, 1885.—Md.

SHERIFF'S SALE—SUBSEQUENTLY SET ASIDE—TAXES PAID BY THE SHERIFF'S YENDEE.—Where land is sold by the sheriff and the sale is subseqnently set aside, the sheriff's vendee has a lien on the land for any taxes he may have paid on the same.—*Harlan v. Jones.*—Filed Dec. 9, 1885.—Ind.

SALE OF CHATTEL—CHANGE OF POSSESSION. —The general rule that the title to chattels does not not wihout a change of possession may be modified by circumstances. Where machinery had been sold and the parties were in the act of moving it when it was levied on, it is held that the title was in the purchaser and that the levy was wrongful.—*Chase, Adm'r v. Garrett.*—Filed Oct. 5, 1885.—Pa.

SUBSCRIPTION TO STOCK—UNPAID—ACTION FOR BY ADMINISTRATOR.—An action may be maintained by an administrator, for subscription to the capital stock of a savings bauk by his decedent, which remains unpaid, and it is not necssary that a claim for the amount should have been presented for allowance by the court.—*Thompson* v. *Reno S. Bank.*——Filed Dec. 1, 1885.—Nev.

SUBROGATION—MORTGAGE ANTEDATING A DEED—NOTICE—Where a mortgage has been foreclosed, and the mortgagor pays the bond, he is entitled to subrogation. Where a mortgage antedates the deed to the mortgagor, but was recorded subsequent to the recording of the deed, it is sufficient nottce to a subsequent purchaser. The record is

enough to put a prudent man on inquiry.—*Semon & Terhune.*—Filed Oct. 28, 1885.—New Jersey.

SPECIFIC PERFORMANCE—FILING AMENDED ABSTRACTS—EQUITABLE RULE.—Speeific performance will not be decreed when the contract is not in good faith, and equitable, and founded on a good and valid consideration. The filing of amended abstracts may be permitted in the discretion of the court, when in equity it is essential to a full presentation of the case but the opposite party must have such notice of the same as equity requires. The rule announced in 51 Ia. 27: 54 Ia. 715: and 56 Ia. 302, is not intended for universal application.—*Palo Alto* v. *Harrison.*—Filed Dec. 17, 1885. Ia.

SET-OEF—DEPOSITOR CAN SET-OFF HIS BALANCE IN BANK AGAINST HIS NOTE IN ADMINISTRATOR'S HANDS.—A banker, at the time of his death, held the note of a depositor for $850 not yet due. The depositor had on deposit $752. After the administrator was appointed, the depositor tendered to him $88, the difference between the amount of the note and his balance, which was refused. The administrator appropriated the deposit as a part of decedent's estate, and then insisted on the full payment of the note. In an action on the note it is *Held*, that the right of set-off existed as to the deposit, at the time of the banker's death, there existed a right of action for the deposit.—*Skiles, adm'r v. Houston.*—Filed Oct. 5, 1885.—Pa.

STATUTE OF LIMITATIONS—IDENTITY OF DEBT ON A PROMISE TO PAY.—A promise to pay a debt barred by limitation, must be explicit and unequivocal. Where it is proved that in a certain conversatiou the witness heard defendant *promise to pay a note*, but did not know whether the promise referred to the particular note in question, it is held insufficient to toll the statute.—*Mayfaith s appeal.*—Filed Oct. 5, 1885.—Pa.

TAXES FOR PUBLIC IMPROVEMENT—UNLIMITED.—The legislature has power to fix the amount of tax to be raised for public improvements, and it may exercise this power directly, or through commissioners. In either case, its actions are not subject to review in the courts.—*Spencer v. Merchant.*—Filed Dec. 8, 1885.—N. Y.

TAX SALE—WRONG DESCRIPTION—PURCHASER'S LIEN.—Where land is sold for taxes, and in the tax deed the land is mis-described, the purchaser may have a lien for the money paid. The limitation of two years does not bar the inforcement of a lien for moneys thus paid. The burden of proof is on the plaintiff to show that the land was liable to taxation, that it had been assessed, and that the taxes were unpaid.—*Scott v. Millikan.*—Filed Nov. 24, 1885.—Ind.

TAX SALE—ASSESSMENT WRONGFULLY MADE—EQUITABLE REMEDY.—Where taxes assessed on land, owned by non-residents, and listed with non-resident taxes, where it should be listed to the tenant or occupant, and the lands are sold fer taxes, the owner may have his remedy in equity, for the removal of the cloud thus placed on the title.—*Stewart v. Crysler.* — Filed Nov. 24, 1885.—N. Y.

TRUST—CESTUIS QUE TRUST MUST BE CLEARLY DESCRIBED.—In a trust deed where the property was to be held *for the use of the ministry* and *membership* of the Methodist Episcopal Church in the United States, *Held* that this was too vague and indefinite to be upoeld.—*Isaacs v. Emory.*—Filed Nov. 20, 1885.—Md.

TRIAL—READING PORTIONS OF THE TESTIMONY TO THE JURY AFTER THEY HAVE RETIRED.—Where the jury, while deliberating upon the case after submission, call for the shorthand reporter, who reads to them such portion of the testimony as they desire, it is ground for error. A married woman who is self-supporting by her own employment, may maintain an action in her own name, for a persanal injury.—*Fleming v.*

Town of Shenandoah.—Filed Dec. 11, 1885. —Iowa.

TENANTS IN COMMON—— AN ACTION BY ONE ONLY.—Where two persons own a vessel as tenants in common, it is *held* that an action by one of the owners against the master, for his share of the earnings, cannot be maintained;they should both join. —*Stimpson v. Fernald.*—Filed Dec. 9, 1885.—Maine.

TELEGRAPH COMPANY—LIMITATION OF LIABILITY BY PRINTED STIPULATIONS ON BLANK.—Where in the transmission of a telegram it is delayed, and the sender loses or suffers damage in consequence thereof, he may recover the amount of the actual damage, notwithstanding the blank on which he wrote his message contained the usual stipulation, that the company would not be responsible for damages for any amount greater than the charges paid for sending, unless the message was repeated.—*Thompson v. W. U. Tel. Co.*—Filed Dec. 1, 1885.—Wis.

TRIAL—PROVINCE OF THE JURY.—The jury are judges of both the *law and fact*, and the court cannot instruct the jury. If in a criminal case the court should instruct the jury to the predjudice of the defendant, he is entitled to a remedy by appeal.—*Swann v. State.*—Filed Dec. 18, 1885.—Md.

TAXES—UNLAWFUL SEIZURE BY COLLECTOR—LIABILITY OF CITY.—Where a tax collector unlawfully seized property and sold it for taxes, the owner may maintain an action against the collector for the tortuous act, but cannot have an action against the city. The money being paid into the city treasury without notice from whom it was collected, would not bind the city.—*Everson v. City of Syracuse.*—Filed Dec. 8, 1885.—N.Y.

TAXATION——VOID JUDICIAL SALE——RECOVERY OF TAXES PAID BY PURCHASER.—One who purchases land at a judiclal sale which is subsequently declared void, may recover taxes paid by him. A grantee of the owner of the land takes it subject to a lien for the taxes thus paid, if he had notice of the equities existing.—*Bradley v. Cole.* —Filed Dec. 14, 1885.—Iowa.

SURETIES—CONSTRUCTION OF CONTRACT. —A surety will not be held beyond the terms of his undertaking, and a fair and reasonable construction should be given to their contract. A contract to do certain work on a railroad, without naming the county in which the wes to be done, will not be void for uncertainty, and sureties will be held liable on such a contract.—*Irwin v. Opp.* —Filed Nov. 24, 1885.—Ind.

TAX ON CORPORATIONS—DEDUCTION OF THE VALTATION OF REAL ESTATE.—The capital stock of a business corporation, should be assessed at what it is worth, in the judgment of the commissiouers. The assessed value of real estate owned by the corporation, should be deducted from the amount of the capital stock.—*People v. Asten, et al.*—Filed Dec. 8, 1885.—N. Y.

TRUSTEE — ATTORNEY — FORECLOSURE SALE.—Where a party who is in fact assignee, sells property as attorney for the assignor, it will not invalidate the sale. Where the notice of sale,was correct in all respects. except the omission of the name of the town where the property is situated and where a fair price is realized,the sale will not be set aside, on the ground that the notice of sale was defective. -- *Dickerson v. Small.* — Filed Dec. 11, 1885.—Md.

TAXATION—LANDS GRANTED IN AID OF RAILROAD—— FORFEITURE.— Where public lands were granted in aid of a railroad company on condition that the road be constructed within a given time, and the road was not completed until one year or more after the limitation, *Held* that as no action to compel a forfeiture had been commenced and as the company had performed all the conditions except as to time of completion, that an equitable title to the lands vested in the company,upon completion of the road, and

that from and after that date the lands were sucject to taxation.—*W. C. Ry. Co. v. Price & Co.*—Filed Dec. 1, 1885.—Wis.

TAXES PAID BY MISTAKE—RECOVERY.—Where the title to lands is in dispute and the taxes are paid by one of the claimants, and the other ultimately obtains the title and possession, the one who has paid taxes may recover the sums thus paid from the prevailing party.—*Goodnow v. Litchfield.*—Filed Dec.—15, 1885.—Iowa.

VENDOR AND VENDEE—CONDITIONAL SALE OF LAND—SPECIFIC PERFORMANCE.—Where land is sold, on contract, on deferred payments, the vendor agreeing to make a good and sufficient deed, at a specified time, and it being further agreed that in case the vendor cannot make a good deed, then the vendee shall pay a reasonable rent for the premises. *Held* that specific performance of the contrac to convey may be enforced, that it cannot be construed as a lease, because the term of lease did not commence until the contract expired or was executed. Pending the fulfillment of such a contract, the vendee may buy in outstanding titles for the benefit of the vendor.—*Green v. Dietrich.*—Filed Nov. 14, 1885.—Ills.

VENDOR AND VENDEE—SALE OF REAL ESTATE BY ATTORNEY—POWER TO SELL INCLUDES POWER TO CONVEY.—In a power of attorney to sell real estate, where the simple power to sell is given, the authority to execute the necessrry instrument to convey the same, is included as incident thereto, al though the word "convey" does not appear in the power of attorney.—*Farnham v. Thompson.*—Filed Dec. 5, 1885.—Minn.

VENDOR AND VENDEE—PAROL AGREEMENT AS TO THE INSURANCE.—Where insured property is sold on a written contract, a parol agreement, that the insurance shall inure to the benefit of the purchaser, is a separate contract from that of sale and may be enforced. Where one has made a contract for the sale of property but has not received the purchase money, nor executed a deed, it does not bar the assured from his right of action in case of loss.—*Parcell v. Grosser.*—Filed Oct. 5, 1885.—Pa.

VENDOR AND VENDEE—CLOUD ON TITLE—DAMAGES FOR REMOVING THE SAME.—The statute provides that one conveying land, with covenants that it is free from all incumbrance, when in fact an incumbrance appears on record, the grantor is liable for damages to the amount of expense incurred in removing the same. *Held*, that this statute has referance to clouds upon the title, such as where a mortgage, which appears of record and has been fully paid, but not satisfied on record.—*Hawthorne v. City Bank.*—Filed Dec. 19, 1885.—Minn.

VENDOR AND VENDEE—BREACH OF CONTRACTS.—A party conveys land on which there is a mill with water power. Another party, owning the land below the land thus conveyed, has also a dam upon the stream, with the privilege of raising his dam eight inches higher than it was at the time of this conveyance. After the conveyance of the land in question, the owner of the property below raised his dam, and the result is that the water power on the property above, was partially or wholly useless thereafter, by reason of back-water. Held that this was a breach of the covenants in the deed and and the grantee might recover damages of the grantor.—*Scriver v. Smith.*—Filed Nov. 24, 1885.—N. Y.

VERDICT BY LESS THAN TWELVE JURORS—CODE, SEC. 2783, UNCONSTITUTIONAL.—Where, upon a trial, a jury was impanneled and adjournment had for two days, and upon re-sitting of the court, one of the jurors being sick and absrnt, the court ordered the trial to proceed with the eleven jurors present. *Held* that the section of the code which auteorized this mehtod of proceeding was unconstitutional, and that a municipal corporation had the same rights in a jury

trial as a privat party.—*Kelsh v. Town of Dyersville.*—Filed Dec. 18, 1885.—Iowa.

VENDOR AND VENDEE—RESERVATION—HOW CONSTRUED.—In a grant, where there is a reservation as broad as the grant, it is void. The proper construction of a grant with a reservation is that which is made by viewing the subject matter of the contract as the mass of mankind would view it, and not in a technical sense. A reservation in lease of "all valuable earths, clays, stones, paints, and substances for the manufacture of paint, upon or under said tract of land," will include clay for making bricks, or for any valuable purpose.—*Foster* v. *Runk.*—Filed Oct. 5, 1885.—Pa.

WAIVER OF LIEN–SAW-MILL OWNER.—The owner of a saw-mill may have a lien on lumber, which by contract he has sawed for another, for any balance of indebtedness due the former from the latter, and although the owner of the lumber may be permitted to pile the lumber in the mill-yard for its better preservation, this is no waiver of the lien.—*Holderman v Manier.*—Filed Dec. 8, 1885.—Ind.

WAIVER OF TORT—INSURANCE—EXCESSIVE LOSS REPRESENTED AND PAID.—Where money has been obtained by false representations, recovery may be had in a civil action, waiving the tort. Where a party falsely represented the amount of loss by fire, in excess of the actual loss, and it is paid by the insnrance company, and the false representations being subsequently discovered, the company may recover the excess paid, over the actual loss sustained.— *Western Assurance Co., v. Towle.*—Filed Dec. 23, 1885.—Wis.

WARRANTY—SALE OF GOODS BY SAMPLE — WARRANTY SURVIVES ACCEPTANCE. — Where goods are sold on sample, and a warranty is given that the sample is a fair representation of the quality of the goods, and when the goods are delivered, they are accepted by the purchaser, but subsequently there is found a breach of the warranty. *Held* that acceptance of the goods does not bar an action on the warranty.—*Kent v. Friedman.*—FiledDec., 22, 1885.—N. Y.

WILL—EFFECT OF PROBATE—DEVISE TO PARAMOUR.—An order of the probate court, admitting a will to probate,implies the testamentary capacity of the testator, and has the force and effect of a verdict. It will not be reversed by an appellate court unless it is clearly against the evidence, and shows prejudice. Where a testatrix devises her property to a man, as her husband, with whom she lived, knowing that she was not legally married to him, and knowing that he had another wife, such devise is valid.—*In Re Will of Donnelly.*—Filed Dec. 18, 1885.—Iowa.

WILL— AMBIGUITY— REVOCATION BY CODICIL.—Where a bequest is plainly and clearly defined in a will, it cannot be revoked by an ambiguous expression in a codicil. Where in the will a life estate is given, and a codicil grants a fee in the same, the codicil will fall. Where a legacy is given absolutely, or made defeasible, a second gift has been held to be given on similar terms.—*Buchanan v. Lloyd.*—Filed Nov. 20, 1885.—Md.

WILL—EXECUTORS WITH POWER TO SELL REAL PROPERTY—PAYMENT OF DEBTS.—Where trustees are appointed in a will with instructions to apply the personal property to the payment of debts, and executors are appointed with power to sell, *Held*, that the intention of the testator was that the executors should sell enough of the realty to pay all the debts of the decedent.—*Reisman v. Collins.*—Filed Dec. 10, 1885.—Md.

WILL—CONFIDENTIAL AGENT, A BENEFICIARY—UNDUE INFLUENCE.—Where the scrivener who writes a will, is a confidential agent of the testator, and is made a beneficiary under the will, it is ground for suspicion of undue influence, and it is incumbent on him to prove that he had explained to the testator fully the value of the estate and the amount which he will take under the will.

The issues of *devisavit vel non*, are contrary to the principles of pleading, but are still recognized as forms of procedure.—*Yardley v. Cuthbertson.*—Filed Oct. 15, 1885.—Pa.

WILL—EXPERT TESTIMONY—WEIGHT OF, AS AGAINST OTHER TESTIMONY.—Expert testimony, on the question of testamentary capacity, is of little weight when it comes in conflict with positive proof of facts and circumstances. The testimony of the party who drew a will, and others who knew the testator well, that at the time of making the will, testator was of sound mind, cannot be overcome by the testimony of expert witnesses, as to his mental capacity at the time. —*Burley v. Gough.*—Filed Nov. 14, 1885. —Ills.

WRITTEN INSTRTMENTS— GUARANTY — COLLATERAL MATTER—PAROL TESTIMONY.—Where it is sought to introduce testimony concerning a matter collateral to a written contract, it must be shown that the collateral matter is entirely distinct and separate from the contract in writing. In a sale of personal property, a warranty of the quality, is not a separate matter but a part of the contract.—*Thompson v. Libbey.*—Filed Dec. 19, 1885.—Minn.

WRITTEN INSTRUMENT–ORAL, CONTEMPORANEOUS AGREEMENTS CANNOT VARY.—Verbal agreements modifying the terms of a written itstrument, made at the same time of the agreement in writing, are of no effect. Where a lease has been assigned, a recognition of the lease by accepting or paying rent, raises a presumption that the lessee has knowledge of the terms of the lease, but such presumption will not apply as to a reservation of fixtures in the lease.—*Snyder v. Bd. of Commissioners.*—Filed Nov. 13, 1885. Col.

WITNESS—DISCRETION OF THE COURT.—ACTION AGAINST AN ADMINISTATOR.—Where a witness is called upon to testify to matters which occurred prior to the death of an intestate, it is largely in the discretion of the conrt, as to whether the testimony be admitted or not, and an appellate court will not interfere with the judgment, where the error assigned is one within the discretionary power of the court, unless there is clearly shown an abase of the discretion.—*Ferguson* v. *Smith Adm'r.*—Filed Dec. 16, 1885.—Ind.

CONTRACT—WAGER—PREMIUM FOR GREATER SPEED OF HORSES.—A premium offered by a society for a horse that will trot a given distance in a given time, is not a wager, and where the conditions are complied with, the owner of the horse can enforce payment of the premium offered.—*Wisner v. Knapp.*—Filed Dec. 22, 1885.—Oregon.

BOUNDARIES—NO MARKED CORNERS—ADVERSE POSSESSION FOR TEN YEARS.—In a question of establishing the boundaries of land, where the commissloners find no marked corners, but do find corners which have been acquiesced in for ten years, this should settle the question. —*Davis v. Curtis.* —Filed Dec. 17, 1885.—Iowa.

HOMICIDE—SELF-DEFENSE — PRIVILEGED COMMUNICATINS.—Killing of an assailant in self-defense is not justifiable, unless the dangers of the situation, would justify a reasonable belief that defendant's life was in danger. Where a party talks with his counsel, in presence of another who is not a counselor, such person may testify to what he heard said to counsel.—*State v. Sterrett.* —Filed Dec. 17, 1885.—Iowa.

Austin v. *N. P. Ry. Co.*
Filed Dec. 12, 1885.—Minn.
(On question of newly discovered evidence, as ground for a new trial.)

Bothwell v. *Milikan.*
Filed Dec. 9, 1885. Ind.
(In an action to quiet title met by a counter claim, on which defendant obtains judgment against plaintiff, he is entitled to costs.)

Brown v, *Searl.*
Filed Dec. 16, 1885. Ind.

(A motion for judgment *non obstante veredicto* can only be made by the party against whom the verdict has been rendered.)

Burkett v. *Bowen.*
Filed Dec. 9, 1885.—Ind.

(Holding that supplementary proceedings in aid of an execution is a civil action and a change of venue may be had.)

Bassett v. *Parsons.*
Filed Oct. 24, 1885.—Mass.

(Holding that the proceeds of an insurance policy payable to defendant, upon his in olvency passes to his assignee.)

B. & M. R. R. Co. v. *Young Bear.*
Filed Dec. 3, 1885.—Neb.

(An answer in replevin alleging that plaintiff was not entitled to possession, and that the property was not unlawfully detained, *Held*, good on demurrer.)

Bowers v. *Tipton.*
Filed Nov. 20, 1885.—Md.

(Holding that forbearance at the request of a third party, is sufficient consideration on which to found an action for the debt.)

Friend v. *Friend.*
Filed Nov. 20, 1885.—Md.

(Holding that in the establishing of boundary lines in a deed, metes and bounds control distances,)

Commercial Ex. Bank v. *McLeod.*
Filed Dec. 15, I885.—Iowa,

(Holding that where fraud is alleged, the burden of proof is on the party alleging it.)

Chapman v. *St. Board of Med. Ex.*
Filed Dec. 24, 1885.—Minn.

(Holding that the State Board of Medical Examiners has power to grant, or to revoke license to medical practitioners. Such action is not a judicial act.)

Caldwell v. *Trowbridge.*
Filed Dec. 19, 1885.—Iowa.

(Holding that the description of property in a chattel mortgage as follows, "60 head of two and three year old steers, and 40 head of yearling steers; also, 65 acres of standing corn, situated in Clay Township, Shelby County,"is insufficient and invalid.)

Creswell v. *Slack.*
Filed Dec. 17, 1885,—Iowa.

(In seeking to enforce a claim against an administrator, the record of a probate court in another state allowing the claim is not admissable as evidence.)

Cedar Rapids v. *Holcomb.*
Filed Dec. 17, 1885.—Iowa.

(Holding that a city has a right to prohibit the keeping of a hog-pen within the city limits.)

City of Marion v. *Ganby.*
Filed Dec. 8, 1885.—Iowa.

(Holding that proceedings by an incorporated city to condemn lands for the extension of streets, may be referred to arbitration, and no written agreement to submit to arbitration is necessary.)

Davis v. *Hull.*
Filed Dec. 10, 1885.—Iowa.

(Holding that an owner of land may enjoin another from cutting timber thereon, although he has permitted him to do so continuously for years.)

Dronilhat v. *Schmidt.*
Filed Dec. 17, 1885.—Oregon.

(An undertaking on appeal must be signed by the appellant, as well as the surety.)

Darrow v. *People Ex. Rd. Norris.*
Filed Dec. 4, 1885.—Col.

(Holding that a law denying the courts the right to inquire into the qualifications of the members of Denver City council is constitutional.)

Dawson v. *Downing.*
Filed Nov. 30, 1885.—Oregon.

(Holding that a creditor must exhaust all legal remedies before filing a creditors bill to have a sale by the debtor set aside on the

ground of fraud.)

Feller v. *St. Bd. of Med. Ex.*
Filed Dec. 24, 1885.—Minn.
(Holding that an advertisement by a physician alleging falsely his ability to cure certain diseases, is sufficient ground for withholding or revoking license to practice.)

People v. *Brick.*
Filed Dec. 18, 1885.—Cal.
(On questions of instructions, in trial for homicide.)

Blandon v. *Glover.*
Filed Dec. 14, 1885.
(Where the defendant has filed an amended answer in conformity with the evidence, it is error to strike out upon motion of the plaintiff.(

Gavin v. *Bd. of Commissioners.*
Filed Dec. 12, 1885.—Ind
(Holding that the board of county commissioners cannot levy a tax for the construction of a free gravel road without notice required by the statute.)

Goodnow v. *Wells.*
(Holding that land held under cougressional or state grants, are taxable when earned under the conditions of the grant.)

Jackson v. *Dycr, Com'r.*
Filed Dec. 15, 1885.—Ind.
(The presumption of jurisdiction attaches where a court pronounces judgment, and in an action based on a judgment, it is not necessary to aver the jurisdiction of the court rendering the judgment.)

Johnson v. *Foster.*
Filed Dec. 18, 1885.—Iowa.
(Holding that where a mortgagor has disposed of his interest, he need not be made a party to foreclosure proceedings.)

Miller v. *House.*
Filed Dec. 16, 1885.—Iowa.
(One seeking to recover on a promissory note made by an agent, whose authority is denied, must show the authority of the agent.)

Little v. *Jacks.*
Filed Dec. 18, 1885.—Cal.
(Holding that requirements as to filing an appeal bond, must be strictly comled with.)

Mayo v. *State.*
Filed Dec. 1, 1885.—Ohio.
(Holding that in the crime of kidnapping or stealing a child, the intention to conceal, or unlawfully detain, is an essential element in the crime.)

Nesbitt v. *Robbins.*
Filed Dec. 19, 1885.—Minn.
(Question of sufficiency of evidence to justify the findings.)

Oliver v. *Cook.*
Filed Dec. 9, 1885.—Me.
(Question relating to the sufficiency of a petition, citing defendant to show cause why plaintiff should not have an action to determine an adverse claim to land.)

Pinkham v. *Crocker.*
Filed Dec. 8, 1885.—Me.
(Holding that a factor, may sell goods on credit, unless he is instructed not to do so, and is not liable in default of the purchaser.)

Perry v. *Brainard.*
Filed Dec. 19, 1885.—Cal.
(Holding that a material man, cannot acquire a mechanics lien, by filing his claim before the building is completed.)

Roberts v. *Adams.*
Filed Dec. 1, 1885.—Neb.
(Holding that where lands are wrongfully sold for taxes, the purchaser may recover the money paid, back from the county.)

Rice v. *Hulbert.*
Filed Dec. 15, 1885.—Iowa.
(Holding that where a judgment is rendered, and no rate of interest is expressed, it will bear only six per cent., although the plaintiff was entitled to a greater rate, had it

been expressed in the judgment.)

Read v. *Yeager.*

Filed Dec. 15, 1885.—Ind.

(Statutes exempting property from taxation, must be strictly construed. A demurrer admits the truth of all facts well pleaded.)

Rowley, adm'r v. *Fair.*

Filed Dec. 15' 1885.—Ind.

(A township trustee has a legal title to all funds received by him, but he should keep each fund separate, and at all times ready to be applied to its designated purpose or to be transferred to his successor.)

Rangley v. *Bowdoin.*

Filed Dec. 14, 1885.—Me.

(Holding that a pauper having removed from an incorporated town, after an absence of five years, his residence in the town is lost and it is no longer liable for his support.)

Raymond v. *Clay County.*

Filed Dec. 18, 1885.—Iowa.

(Holding that where road commissioners refuse damages to a claimant, and the refusal is affirmed by the supervisors, an appeal may be taken by claimant to the circuit court, making the county defendant.)

Rogers v. *Traver.*

Filed Nov. 14, 1885.—Ill.

(Holding that an order of the appellate court, remanding "for such other proceedings as to law and justice appertain," is not of itself appealable.)

Stafford v. *Rubens.*

Filed Nov. 14, 1885.—Ill.

(Holding that allowing a child of the age of three years, accompanied by another several years older, to play in the streets,is not negligence.)

State v. *Mower.*

Filed Dec. 17, 1a85.—Iowa.

(Question of sufficiency of evidence to convict an accessory.)

Sweizey v. *Sietson.*

Filed Dec. eo, 1885.—Iowa.

(Where an appeal from a justice's judgmint is void for want of proper jurisdiction a party to the suit is estopped from asserting the judgment subsequently.)

State v. *C. B. & Q. Ry. Co.*

Filed Dec. 18, 1885.—Iowa.

(In establishing a highway aeross the track of a foreign railway corporation, notice by publication is sufficient.)

Speadling v. *County of Worth.*

Filed Dec. 19, 1885.—Iowa

(Holding that when an adult person is adjudged insane, and refused admission to the county hospital, the father of the insane person, or any one who voluntarily takes care of the person may recover reasonable campensation for the couuty—$4 per week held not excessive.)

VanHorn v. *Redmon,*

Filed Dec. 15, 1885.—Ia.

(Evidential—Question of new trial.)

Welch v. *State.*

Filed Dec. 15. 1885.—Ind.

(A party cannot impeach his own witness although the subject matter of the testimony be collateral to the issue.)

Wright v. *Tichenor.*

Filed Dec. 10, 1885.—Ind.

(A sale of land upon a judgment against the husband, does not bar the wife of her right of dower.)

Burke v- *Simonson.*

Filed Dec. 9, 1885.—Ind·

[Where one of the counts in an indictment is good, it is error to sustain a demurrer thereto.]

Bryan v. *Lyon.*

Filed Dec. 17, 1885.—Ind.

[Holding that in a divorce proceeding, an order of the court awarding the custody of children to the mother, is not conclusive against the father, after her death, as against another who was not a party to the former proceedings.]

Hinkle v. *Fisher.*

Filed Nov. 25, 1885.—Ind.

(To bring a contract within the statute of frauds, it must affirmatively appear in the contract, that it was not to be performed within one year.)

Holman v. *Warren*

Filed Dec. 19, 1885.—Cal.

(In an aetion originally brought in a justice's court, for a sum under $300, the supreme court has no jurisdiction on appeal.)

G. S. & T. Deposit Co. v. *Jenkins.*

Filed Dec. 2, 1885.—New Jersey.

(Where two or more parcels of land lying contiguous, and all in posession of defendant are sold on execution as one parcel, without objection by defendant, the sale is valid.)

Grote v. *Grote.*

Filed Jan. 7, 1886.—N. J.

(Where plaintiff abandons a bill after defendant has answered, the defendant cannot have affirmative relief.)

Bird v. *State.*

Filed Dec. 10, 1885.—Ind.

(In a prosecution for allowing a minor to play pool, it is error to instruct the jury to view the boy and determine from his appearance, whether defendant had reason to believe him to be under age from his appearance.)

Wells v. *Ellis.*

Filed Dec. 23, 1885.—Cal.

(An assignment by a firm for the benefit of creditors, works a dissolution of the partnership.)

A RAILROAD company is bouud to furnish seats for passengers, and are liable for damages for not doing so, in an action for breach of contract. The following note of a case, decided by the supreme court of Arkansas, we take from the Chicago Tribune of Jan. 27:

"Lea purchased a ticket from Little Rock to Malvern and boarded the train, but could find no seat and refused to deliver the ticket. Near Alexandria the conductor again requested the ticket, and, being refused, put him off at that place without force. Held: The contract was that he should have a seat. Neither party can sever the contract. The road cannot simply carry him without a seat. The passenger may refuse to give up the ticket, but cannot accept the carriage without seat and not pay. No recovery could be had because of the ejection. He could sue for non-compliance with the contract."

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The Chicago Law Journal.

CHICAGO, MARCH, 1886.

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ABORTION—TESTIMONY—THE ACCUSED HAVING IN POSSESSION THE NECESSARY INSTRUMENTS.—In a trial on an indictment for manslaughter, resulting from an abortion, it is competent to show that the accused had instruments suitable for producing abortion, and had offered to produce abortion for a certain consideration. It is competent for a physician who made a post mortem examination, to give his opinion as to what was the cause of death.—*People* v. *Sessions.*—Filed Jan. 6, 1886.—Mich.

ACTION AT LAW WHERE A SUIT IN EQUITY IS PENDING—ABATEMENT.—Where a suit in equity, by the assignee of a bank, against its directors, for mismanagement of the business is pending, and an action at law is commenced for the same cause of action, a plea of abatement may be sustained, as the rights of all parties may be determined in the suit in equity.—*Penn Bank* v. *Hopkins.*—Filed January 4, 1886.—Penn.

ACTION TO RECOVER PROPERTY, PERSONAL OR REAL—DEMAND.—Where personal property is in the lawful possession of one, before an action can be maintained for its recovery a demand and refusal must be shown. To recover possession of real property from one who came lawfully into possession, he must also show a demand.—*McNally* v. *Connelly.*—Filed Jan. 29, 1885.—Cal.

ADMINISTRATOR—VACANCY BY INSANITY—APPOINTMENT OF ANOTHER.—An absolute vacancy in the administration of an estate, by the finding of the administrator insane, if he be committed to an insane asylum, another may be appointed; but if no application is made for the appointment of another, until the disability is removed, it is then too late.—*In Re Estate of Moore.*—Filed December 28, 1885.—California.

ADVERSE POSSESSION—DWELLING TEMPORARILY UNOCCUPIED.—Where the grantee of lands erects a dwelling thereon, and enters into possession, and subsequently conveys the land, and during the ten years succeeding his purchase, the land is transferred several times, the dwelling being vacant temporarily, at several times, it is *held* that the possession of one may be tacked on to the other, and that after ten years from the date of the first purchase, the one in possession may maintain title by adverse possession.—*Stettnich* v. *Lamb.*—Filed Jan. 6, '86.—Neb.

AFFIDAVIT OF DEFENSE—SUFFICIENCY OF.—Where a defendant, a treasurer of a church society, filed an affidavit, setting up that "he accounted for and paid over to the congregation, all the moneys arising from the contributions aforesaid, which was received by him as treasurer, and that he is not indebted to the congregation in any amount," is *held* insufficient, because not sufficiently definite. An affidavit of defense must state with par-

ticularity the time, amount, and manner of payment, and to whom paid.—*McCracken* v. *F. R. P. Church.*—Filed Jan. 4, '86.—Pa.

ANSWER IN CHANCERY—TAX DEED.—An answer in chancery must be verified, or it has no effect as evidence. A tax deed is *prima facie* proof that the sale was regularly conducted. Where a tax deed is introduced in evidence, the burden of proof rests on those contesting the validity of the sale, to show that the sale was not regularly made according to law.—*Ransom* v *Henderson.*—Filed Jan. 7, 1886.—Ills.

ANSWER—SPECIFIC PERFORMANCE.—Such allegations as are not answered or denied are taken as admitted. It is no defense to an action for the specific performance of a contract to convey, to allege that the grantee agreed to put up a building on the land within a certain time, when no such condition was expressed in the contract.—*Hanson* v. *Lehman.*—Filed Jan. 6, 1886.—Neb.

APPEAL—APPLICATION TO BE JOINED IN ACTION FOR PARTITION—RIGHTS OF ALL PARTIES IN INTEREST.—In proceedings for partition, where upon motion the action is discontinued as to certain parties, they have a right to petition for reinstatement, and if their application is denied, it is a final order and an appeal will lie from it. All parties having any interest in the premises, have a right to be joined as parties.—*Morse* v. *Stockman.*—Filed Dec. 23, 1885.—Wis.

APPEARANCE—WAIVER OF IRREGULAR SERVICE—REVERSAL.—In an action in a justice's court, where no valid service of summons has been made on defendant, if he appears and goes to trial, he waives his right to except to the jurisdiction of the justice, and he cannot take advantage of the want of jurisdiction, by a motion to dismiss. Where the verdict is supported by evidence, the judgment will not be reversed, although the preponderance of evidence seems to be against the verdict.—*Day* v. *Henry.*—Filed Dec. 31, 1885.—Ind.

ARSON—OVERVALUATION IN INSURANCE—EVIDENCE OF MOTIVE.—In a prosecution for arson, it is competent to show that the defendant had caused his property to be overestimated in value, in insurance, as bearing upon the motive for the crime. Such overvaluation, if shown to be by mistake is not ground for a criminal motive.—*Stitz* v. *State.*—Filed Dec. 31, 1885.—Ind.

ATTACHMENT OF REAL ESTATE—RENTS COLLECTED BY ADMINISTRATOR—ASSETS.—An attachment levied on real estate, at the commencement of an action, does not give the attaching creditor the right of possession until judgment in the case, nor a right to the rents and profits. Where an administrator collects rents, which are used for paying the expenses of administration, with the approval of the heirs and of the court, they are to be considered assets of the estate.—*Kothman* v *Larkson.*—Filed Jan. 9,'86–Kan.

ATTORNEY AT LAW——SUSPENSION FOR PROFESSIONAL MISCONDUCT.—Where an attorney abstracted from the files in the office of the prothonotary, a receipt attached to a *fi fa*, it is *held* to be such misconduct as to justify his disbarment.——*In Re Gates.*—Filed January 18, 1886.—Penn.

ATTACHENT—PROPERTY SEIZED ON A SECOND WRIT.—Property already attached, by a copy in town clerk's office, is seized on a second writ. Part of the property was allowed to remain in possession of the owner, and part only was taken into possession within the time allowed by statute, but it did not appear that execution was taken out in proper time. *Held* that the seizure under the second writ was valid.—*Pond* v. *Baker.*—Filed January 23, 1886.—Vermont.

ATTORNEY'S FEE—AMOUNT CLAIMED UNDER A PROVISION IN MORTGAGE THEREFOR. Where there is a clause in a mortgage which provides that "In case of foreclosure

of this mortgage, a sum equal to ten per cent of the whole amount due, shall be awarded, in addition to the judgment as an attorney's fee," if an action to foreclose has been commenced, and before judgment the defendant pays a portion of the debt due, he cannot thereby defeat the recovery of the fee provided for, the ten per cent is to be computed on the amount due when the action was commenced.—*Hand* v. *Phillips*.—Filed January 6, 1886.—Nebraska.

BAILMENT——PLEADINGS—MISNOMER.—Trover will will lie against a bailee, who wrongfully retains goods. In case of misnomer, the plea of the general issue admits the capacity of plaintiff to sue. The question of misnomer of plaintiff, can be raised only by plea in abatement.—*Doherty* v. *Madgett*.—Filed jan. 1, 1886.—Vt.

BASTARDY—TRIAL AND JUDGMENT IN THE ABSENCE OF DEFENDANT.—Where an action has been commenced against the reputed father of a bastard child, and defendent has entered into a recognizance to appear, and at the time fixed for trial fails to appear in court, the trial may proceed to judgment in his absence, and a verdict and judgment so rendered will be valid. ——*Baker* v. *State*. ——Filed December 23, 1885.—Wisconsin.

BIGAMY—ACT OF 1882—POWER OF GOVERNOR TO APPOINT OFFICERS.—The act of march 22, 1882, made vacant such offices as were held by persons disqualified to hold office under the act. The governor had power to appoint a successor to an office thus vacated. One contesting the right of the appointee to hold the office, was bound to show a better title in another.—*Weiner* v *Smith*.—Filed January 15, 1886.—Utah.

BILL OF EXCEPTIONS—AFFIDAVITS NOT INCORPORATED IN THE BILL.——Affidavits used as evidence in the district court, will not be considered by the appellate court, unless they are properly incoporated in the bill of exceptions. If an appeal from a justice's court to the district court is not presented within the time allowed, the district court may non-suit the plaintiff, and enter judgment.——*Jacoby* v. *Mitchell*.——Filed January 6, 1886.—Nebraska.

BILL OF EXCHANGE—ACCEPTED AFTER TRANSFER—RIGHTS OF PARTIES.— When a draft is accepted by the drawee, he becomes primarily liable for payment of the same, even though he may have been induced to accept it through false representations of the drawer. The delivery of a draft implies that the drawee has funds in hand to pay the same, and the acceptance by the drawee is an admission of that implication which he cannot subsequently retract.—*Heurtematte* v. *Morris*.—Filed Dec. 22, 1885.——N. Y.

BREACH OF PROMISE—EQUAL DIVISION OF THE APPELLATE COURT—AFFIRMANCE OF JUDGMENT BELOW.—Where exception was taken to the admission of certain testimony, in an action for breach of promise of marriage, and the judges of the appellate court were equally divided, on the question of the propriety of its admission, it is *held*, that the ruling of the trial court is affirmed. Testimony as to declarations made by plaintiff to third parties and not in the presence of defendant, were properly submitted to the jury in corroboration of plaintiff's testimony.——*McPherson* v. *Ryan*.——Filed January 13, 1886.——Michigan.

CAPITAL CRIME——DISCHARGE OF JURY WITHOUT CONSENT OF PRISONER—SECOND TRIAL BARRED.—Where a jury had been selected and sworn, and had been allowed to separate and subsequently discharged without the consent of the prisoner. *Held* that the defendant cannot be again put upon trial for the same crime.—*Hilands* v. *Commonwealth*.—Filed Jan'y 4, 1886.—Penn.

CHATTEL MORTGAGE—LEVY BY MARSHALL—SECOND MORTGAGEE.—Where prop-

erty is held under a chattel mortgage, and second chattel mortgage is made on the same property, and the first mortgagee has the right to dispose of the property for the joint benefit of himself and the second mortgagee, a wrongful levy and seizure of the property by the U. S. marshal, gives the two mortgagees a right of joint action against the marshall, for wrongful seizure. *Dinsmore* v *Mathews*. Filed Jan. 6,'86.–Mich.

COMMON CARRIER——AGREEMENT TO TRANSPORT CATTLE—REFUSAL.—Where a railway company had agreed to carry certain cattle, and the shipper delivered the cattle at the place of shipment, but before placing them in the cars, some of the cattle escaped and could not be loaded on the car. *Held* that there was no refusal to ship as agreed, and the company was not liable for a breach of the agreement.—*L. N. A. & C. Ry. Co.* v *Godman*.–Filed Jan. 7,'86.—Ind.

CONTRIBUTORY NEGLIGENCE—NONSUIT. —Where an experienced oil miner, walked within forty feet of a newly opened gas well carrying in his hand a lighted lamp, and an explosion was caused thereby, by reason of which he lost his life, on an action by his representatives to recover damages for his death, the court upon hearing the facts, withdrew the case from the jury and ordered a non suit, on the grounds of contributory negligence. Affirmed. —— *McClafferty* v. *Fisher*.—Filed Nov. 2, 1885.—Penn.

CONTINUANCE—MOTION FOR——DISCRETIONARY POWERS OF COURT.—Motions to continue and motions to postpone a case, are addressed to the discretion of the court, and neither can be demanded as a matter of right, except upon cause shown. The ruling of the trial court on such a motion, is not subject to review on appeal.—*Morris* v. *State*.—Filed Jan. 5, 1886,—Ind.

CONSTITUTIONAL LAW——STATUTES PRESCRIBING DIFFERENT METHODS OF PROCEDURE BY DIFFERENT TRIBUNALS.—The constitution declares that "the general assembly shall not grant any citizen or class of citizens, privileges and immunities which, upon the same terms, shall not equally belong to all citizens." *Held*, that a statute which prescribes different methods of procedure for different tribunals, does not conflict with this provision in the constitution. —*Lipes* v. *Hand*.—Filed Jan. 7, 1886.—Ind.

CONTRACT—SIGNED BY ONLY ONE OF THE PARTIES.—Where a contract was entered into between an employer and employe, for a term of service more than a year, and the contract did not contain a promise on the part of the employe to perform the stipulated service, and was not signed by him, but was signed by the employer. *Held* that the contract was void, under the statute of frauds.—*Wilkinson* v. *Havenlich*. —Filed Jan'y 6, 1886.—Nich.

CONTRACT—LIABILITY OF MARRIED WOMAN. —It is a well established principle, that neither in law nor equity can a married woman be bound by contract. In order to make a married woman's contract chargeable upon her separate estate, the credit must be given to the estate, not to the individual.——*Southworth* v. *Kimball*.——Filed January 1, 1886.——Vermont.

CONTRACT—SALE—WHEN A CONTRACT IS COMPLETE.—In negotiations looking to a sale of goods, as long as any material point proposed by one, is not accepted by the other party, there is no contract entered into. A published pricelist of goods is a mere prnposition, and may be withdrawn at pleasure, unless accepted before withdrawal without any modification.——*Schenectady Stove Co.* v *Holbrook*.–Filed Dec. 22, '85. N.Y.

CONSTITUTIONAL LAW——ESTABLISHING LAMP-DISTRICTS IN CERTAIN TOWNSHIPS—CLASS LEGISLATION.—An act authorizing the township authorities to put up street lamps in a certain township, and levy an assessment to pay for the same, is uncon-

stitutional and void. An act authorizing certain improvements in one township which would be inapplicable in another or in the townships generally is class legislation, and void. — *State* v. *Bloomfield.* — Filed November 1885.—New Jersey.

CONTRIBUTORY NEGLIGENCE—EMPLOYER AND EMPLOYE.—An employe engaged in drawing material to a stave factory, was in the habit of unloading near to a shaft which drove the machinery in the factory. During the employment aforesaid, the shaft was broken and repaired, and in doing so some rough points projected which made it more dangerous than heretofore to come in contact with when in motion. The employe, not knowing of the increased danger in coming in contact with it, was caught by it and injured. *Held* that the employer was liable for damages for the injury.—*Hawkins* v. *Johnson.*——Filed Jan. 9, 1886.—Ind.

CONSPIRACY TO DEFAME A PERSON—ACTION FOR—PLEADING.—An action may be maintained for a conspiracy to defame and injure a person in his business or calling, when any means have been employed to carry into execution the purpose of the conspiracy. In such action where the plaintiff alleged in his declaration, that defendants did conspire together for such purpose and did speak and publish of him these words: "The man must not be right in his mind," *Held* sufficient, and a demurrer being interposed to this declaration and being sustained by the trial court, on appeal the judgment is reversed, and a procedendo awarded.—*Wilder* v. *McKee, et al.*—Filed Jan. 4, '86—Pa.

CORPORATION—TRANSFER OF FRANCHISE BY ONE CORPORATION TO ANOTHER—LIABILITY OF THE LATTER.—Where a railway company being unable to agree with the owner of land upon the amount of damages to be paid for right of way, gives to him a bond to secure the payment of whatever damages shall be finally assessed, and before judgment is had determining the amount, the company sells and transfers all its property and franchises to another company, the latter is held liable on the bond of the former company.—*Potter* v. *P, & S. Ry. Co.* —Filed Jan'y 4, 1886.—Penn.

CORPORATION—DIRECTORS OR OFFICERS TRUSTEES——GIVING PREFERENCES TO THEMSELVES.—Where a corporation is insolvent, the offers of the corporation are to be considered as trustees for the creditors, and they cannot so manage the affairs of the corporation, as to give a preference to themselves, if they are creditors. A conveyance of the property of the corporation for such purpose is void. —*Haywood* v. *Lincoln Lumber Company.* —Filed December 23, 1885.—Wis.

CORPORATIONS—ORGANIZED FOR MANUFACTURING—PACKING AND STORING ICE.—Cutting and storing ice, which has been formed by natural processes, is manufacturing, and a corporation formed for the purpose of "putting up, packing and manufacturing for market, Detroit river and lake ice, and distributing and selling the same," is within the meaning of the statute authorizing corporate organizations for manufacturing purposes.—*Att'y General* v. *Belle Isle Ice Co.*—Filed Jan. 20, 1886.—Mich.

CORPORATION—MEANING OF "TWO-THIRDS OF THE STOCKHOLDERS."—Where the act under which a corporation is empowered to perfarm certain acts provided "at least two-thirds of the stockholders of such company approve and consent to the same." Construed to mean one or more persons owning two-thirds of the stock, not two-thirds in number of the stockholders.—*Fredericks* v. *Pa. Canal Co.*—Filed Oct. 26, 1885.—Pa.

COSTS—CRIME COMMITTED IN ONE COUNTY, AND TRIAL HAD IN ANOTHER.—Where a crime is committed in one county, and the trial of the criminal had in another, the county in which the crime was committed, is liable to the other for all the costs and

expense of the trial. Upon the first trial, it is necessary that the accused make application for an order of court that the witnesses be paid, but on a second trial of the same case, the court may make such order without an application.—*Co. of Jones* v. *Co. of Linn.*—Filed Dec. 17, 1885.—Iowa.

CRIMINAL LAW—RAPE—RESISTANCE OF PROSECUTING WITNESS—UNCHASTE FEMALE. In a prosecution for rape, the state is bound to show determined resistance by the victim of the assault. Rape may be committed on an unchaste woman. An instruction that the jury should consider the degree of interest which a witness has in the case, their manner and actions while testifying, and all other circumstances connected therewith, in considering the just weight of the testimony, is uot error.—*Anderson* v. *State.*—Filed Dec. 31, 1885.—Ind.

CRIMINAL LAW—PREJUDICE OF JUROR.—The affidavit of the defendant, alleging that he is informed, and believes, that one of the jurors stated during the trial that he would procure a verdict of guilty, or hang the jury, is not sufficient to vitiate the verdict.—*State* v. *Tecker.*—Filed Dec. 17, 1885.—Iowa.

CRIMINAL LAW—INDICTMENT—AMENDMENT.—The statute requires that all indictments conclude with the words "against the peace and dignity of the state." An indictment containing two counts, and only the latter concluding in the required form, the other may be amended by adding the requisite words.——*State* v. *Anderson.*—Filed January 14, 1886.—Vermont.

CRIMINAL LAW—MOTION FOR CONTINUANCE—DISCRETION OF COURT.—The order of court denying a motion for continuance will not be reversed on appeal, unless a gross and arbitrary abuse of discretion is shown. The exclusion of testimony will not be ground for reversal, unless the party suffers damage by its exclusion.—*State* v. *O'Neill.*—Filed Dec. 14, 1885.—Oregon.

CRIMINAL LAW—APPEAL FROM JUSTICE'S COURT CANNOT BE DISMISSED AS OF RIGHT.—When, upon conviction of a misdemeanor, before a justice of the peace, an appeal is taken, this stays all proceedings in the case and transfers the case fully to be disposed of *de novo*, in the appellate court, and the plaintiff cannot dismiss the appeal.—*Wiseheart* v. *State.*—Filed Jan. 5, 1886.—Ind.

CRIMINAL LAW—ARRAIGNMENT—PLEA.—The failure to formally arraign an accused in a justice's court, is no ground for reversal, if it appears that defendant interposed a plea. Where the record does not show that a plea was interposed, it will be presumed that it was, on the ground that proceedings are presumed to be regular, unless shown to be otherwise.——*Jones* v. *State.*——Filed January 5, 1881.—Indiana.

CRIMINAL LAW—BREAKING AND ENTERING A DWELLING.—Where a person calls upon the occupants of a dwelling tn the night time, to open the door and admit him, alleging that he is an officer and desires to serve a writ on a party in the house, but in fact is no such officer, and when the door is opened, he enters and commits deeds of violence and robbery. *Held* that his method of obtaining entrance is a breaking and entering under the statute.—*Seling* v. *White.*—Filed January 6, 1886.—Neb.

CRIMINAL LAW——COMMITMENT UNTIL FINE IS PAID—POWER OF COUNTY BOARD TO REMIT FINE.—Where a fine and payment of costs are imposed on a defendant in a criminal prosecution, and he is committed until the fine is paid, where it appears that he is absolutely unable to pay the penalty imposed, the county board may remit the whole or part, as in iheir discretion is best and just to do, and discharge the prisoner accordingly.—*In Re Boyd.*—Filed January 9, 1886.——Kansas.

DAMS—DAMAGE FROM BACKWATER—TWO MILLS ON SAME STREAM.—Where two mills

are erected on the same stream, and the owner of the lower mill erects a dam, the backwater from which causes damage to the owner of the upper mill, in an action for damages it is competent to show how much the backwater hindered and obstructed the operations of the upper mill, as a means of getting at the measure of damages.—*Gibson* v. *Fischer*.—Filed Dec. 16, 1885.—Ia.

DECEDENT'S ESTATE——PROCEEDINGS IN PARTITION.—When a decree is entered for the partition of a decedent's estate, all parties in interest are entitled to notice of the meeting of the commissioners to determine the matter; all the commissioners appointed must be present, but all need not sign the report.—— *Simpson* v. *Simpson*.—— Filed January 13, 1886.—Wisconsin.

DEED—LAND BOUNDED BY A HIGHWAY —REPAIRING HIGHWAY.—Where land is conveyed and described as lying "southwardly of a highway," and excepting the road laid over said land, it will be construed as including the land to the middle of the highway. A surveyor of highways who wilfully injures the land of any one, by taking therefrom material for repairing a highway, is a trespasser and will not be protected from the consequences by reason of his office. —— *Wellman* v. *Dickey*. —— Filed December 19, 1885.—Maine.

DEPOSITIONS—MOTION TO SUPPRESS.—A motion to suppress a deposition because the commissioner did not subscribe each sheet of the same, and becausc the comissioner did not enclose the commission, interrogatories and deposition, in a packet, and bind with tape and seal, precisely as is required by rule, overruled. *Held* that these objections were formal, and where there was no fraud shown in connection with the taking of the deposition, they were properly received in evidence.—*Chadwick* v. *Chadwick*.—Filed Jan. 12, 1886.—Mich.

DEMURRER—BAGGAGE DELIVERED TO STATION AGENT—LIABILITY FOR LOSS ALTOUGH THE OWNER HAS NOT PURCHASED A TICKET. —A demurrer to evidence admits all the facts which he evidence tends to prove. Where a railroad company receives baggage and it is lost before transit, the company is liable for the loss, although the owner thereof had not purchasəd a ticket. A trunk delivered to the baggage master in the evening, intended for tranit by the morning train, was lost during the night. *Held* that the company was liable for the loss.—*L.S.&M.S.Ry Co.* v. *Foster*.—Filed Dec. 29, 1885.—Ind.

DEPOSITIONS—TAKEN BY AGREEMENT OF PARTIES—MAY BE INTRODUCED BY EITHER PARTY.—Where a deposition is taken by an agreement between the parties, and the party on whose motion it was taken fails to introduce it as evidence in the case, the opposite party may do so.—*Smith* v. *Capital Bank*. —Filed Jan. 20, 1886.—Minnesota.

DIVORCE—EFFECT OF FOREIGN DIVORCE. —A woman, a resident of Canada, was married in New York and for a time lived in that state. She left her husband and returned to Canada to reside, and her husband obtained a divorce on the ground of desertion, in Ohio. She subsequently married the plaintiff, who knew of her former marriage and divorce. The plaintiff now seeks a divorce on the ground that she had a husband living when he married her. *Held* that the Ohio divorce was void and a decree is granted.——*O'Dea* v. *O'Dea*.——Filed December 22, 1885.—N. Y.

DRAINAGE ALONG A ROAD—IMPERFECT DRAINAGE—DAMAGE TO ADJACENT PROPERTY.—Where drains are carried along the side of a roadway, in such manner that a flood will of necessity cause damage to adjacent property,the person or the authorities causing the drains to be so constructed, are liable for the damage accruing therefrom.—*Huddleston* v *Bellevue*.—Filed Jan. 4,'86.—Pa.

EASEMENT——RIGHT OF INGRESS AND

EGRESS TO PREMISES.—The owners or occupants of the second floor of a building, have a right to ingress and egress by means of a hall used in common by the occupants of the first and second floors. In *Dillman* v. *Hoffman*. 38 Wis. 559, it is said;"When one part of an estate is dependent, of necessity, for enjoyment on some use in the nature of an easement, in another part, and the owner conveys either part, without express provision on the subject, all the authorities agree that the part so dependent, thence called the "dominant estate," carries or reserves with it an easement of such necessary use in the other part, thence called the "servient estate."—*Galloway* v. *Bonesteel.*—Filed January 12, 1886.—Wisconsin.

EJECTMENT—WAIVER OF EQUITABLE DEFENSE——PRIVILEGED COMMUNICATIONS.—Where an equitable defense is set up in an action of ejectment, unless the defendant ask that trial be had first as to such equity, he waives his defense in equity, by going to trial on the law issues. A communication to an attorney who is not retained as counsel in the case, is not privileged.—*George* v *Silva.*—Filed Dec. 28, 1885.—Cal.

EJECTMENT—ADMISSION ON TRIAL CANNOT SUBSEQUENTLY BE DENIED.—In an action in ejectment, where the defendant admitted on trial that a deed offered in evidence was not in effect a mortgage, he cannot on appeal deny that admission, or claim that such deed was in fact a mortgage.——*Evans* v. *Enloe.*——Filed December 23, 1885.—Wisconsin.

ERROR——MOTION FOR A NEW TRIAL.—UNLAWFUL DETAINER——EJECTMENT.——Where the record does not show that a motion for a new trial was made in the trial court, it will not be presumed by the appellate court. Errors in the trial cannot be considered by the appellate court, unless a motion was made in the trial court for a new trial on the ground of such errors. Where an action has been commenced for unlawful detainer, and an appeal taken from the judgment in the case, the pendancy of the appeal does not bar an action in ejectment by the same plaintiff against the same defendant.——*Bettlinger* v. *Hurley.*——Filed January 9, 1886.—Kansas.

ERROR——INSTRUCTIONS DIVIDED INTO SECTIONS.—The statute provides that instructions shall be submitted to the jury in writing, and divided in consecutively numbered paragraphs. If this is not complied with, and the opposite party makes no objection, on appeal, it will be considered that the point was waived.—*Gibson* v. *Sullivan.*—Filed Jsn'y 6, 1886.—Neb.

ERROR—WEIGHT OF EVIDENCE—PRIVILEGED COMMUNICATIONS.—Where the evidence in an action is nearly balanced on either side, the verdict will not be set aside as against the evidence. A communication made to an attorney who has not been retained as counsel is not privileged.–*Romberg* v. *Hughes.*—Filed Jan. 6. 1886.—Neb.

ERROR—STAY OF PROCEEDINGS—REVIVAL OF JUDGMENT.—The commencement of proceedings in error in the supreme court, does not necessarily stay all proceedings in the case in the lower court. It only stays proceedings in judgment which it is sought to have reviewed. Where no order is made to stay proceedings in the lower court, and pending the appeal the prevailing party dies, the district court, upon application and notice, may revive the judgment in the name of the administrator of the estate of deceased.—*U. P. Ry Co.* v. *Andrews.*—Filed January 9, 1886.—Kansas.

ERROR—FILING AMENDED PLEADINGS—SUBMISSION TO JURY——Where amended pleadings are filed, and on appeal certified by the judge as part of the transcript, they will be presumed to have been regularly filed. Whether the facts in evidence be disputed or not, if different persons may honestly draw different conclusions from

them, the case should be left to the jury.—*Johnson* v. *Missouri Pacific Railway Co.*—Filed Jauuary 6, 1886. Nebraska.

ESTATES—DEED TO HUSBAND AND WIFE.—LIFE ESTATE.—Where a deed is made to husband and wife, and by the terms of the deed, the land is to go to the heirs of the husband and wife upon their demise, a life estate only is created in the grantees, but they take in entirety, and upon the death of either one, the other is entitled to hold the estate during his or her life.—*Hadlock* v. *Gary.*—Filed Jan. 9, 1886.—Ind.

EVIDENCE—FRAUDULENT TRANSACTION—CONCURRENT ACTS.—Where goods have been fraudulently purchased, in an action to recover them it is competent, as showing a fraudulent intent, to show other fraudulent acts, or contracts concurrent, which were tainted with fraud.—*B. Fertilizer Co.* v. *Fuller.*—Filed Jan. 15, 1886.—Vermont.

EVIDENCE—HEARSAY—ACTION FOR DAMAGES FOR PERSONAL INJURY.—In an action for damages for personal injury, a physician was permitted to testify to what the consulting physicians said concerning the case when in consultation. *Held* error. It was hearsay evidence and not admissible.—*Village of Iosco* v. *Crawford.*——Filed Januarp 6, 1886.——Nebraska.

EXECUTORS—STATUTE OF LIMITATIONS—NOTICE OF LETTERS TESTAMENTARY.——Where a claim against an estate is not presented within six years from the issue of letters testamentary, it is barred by the statute, notwithstanding the executors do not give notice of the issue of letters as required by the statute.——*Yonkers Appeal.*——Filed Jan. 4, 1886.—Penn.

EXEMPTION—WAIVER OF BY REMOVAL—WHAT WILL AMOUNT TO A WAIVER OF.—To render goods liable to levy and attachment on an execution, by removal of the owner to another state, which were othewise exemt, it must appear that there was an attempted departure without the intention of returning. A declaration by the party that he intends leaving the state, or the starting upon a journey with his family having boxed up his goods, are not conclusive evidence of an intention to leave the state and not return. *Tubbs* v. *Garrison.*—Filed Dec. 17. '85.—Ia.

EXECUTION—SALE OE REAL ESTATE ON VENDITIONI EXPONAS.——A sale of real estate on a writ of *venditioni exponas*, may be made without a waiver of condemnation, if the defendant does not appear and object within a reasonable time.—*Berry* v. *McLafferty.*—Filed Jan. 4, 1886.—Penn.

EXECUTION——DAMAGES FOR WRONGFUL SEIZURE.—ACTION FOUNDED IN PART ON CONTRACT AND PART IN TORT.—In an action to recover damages for wrongful detention and arrears in rent, a judgment was obtained for $1000, $250 of which was for damages and $750 for rent. An execution was issued on the judgment, and defendant's property was seized and sold, notwithstand his claim of exemption. In an action by defendant against the sheriff for wrongful levy and sale, the schedule upon which he demanded exemption, being filed with the complaint, cannot be considered a part of the complaint. The complaint must show a right to exemption, and a strict compliance with the statute in the claim for exemption. *Huseman* v. *Simms.*–Filed Dec. 30, '85–Ind.

EXCEPTIONS—OMISSION OF SOME OF THE EVIDENCE—INSTRUCTIONS.—Where the bill of exceptions omits part of the evidence, no question which depends on the evideuce, will be considered on appeal. If all the instructions considered as a whole, properly state the law of the case, although one of the instructions taken alone would be erroneous, the case will not be reversed on that account.—*L. N. A. & C. Ry. Co.* v. *Grantham.*—Filed Dec. 31, 1885.—Ind.

EXCEPTIONS—MANUSCRIPT OF EVIDENCE

MUST BE MADE PART OF.—In order to make the evidence a part of the record, it must be properly incorporated in the bill of exceptions. Where the bill of exceptions is filed in the time allowed, and the evidence subsequently filed out of time, it cannot be incorporated in the bill and made part of the record, unless it was so filed by leave of the court.—*Lowery* v. *Carver*, *Administrator*. —Filed Jan. 5, 1886.—Ind.

FIRE INSURANCE—RE-INSURANCE—LIEN OF POLICY HOLDER.—Where a policy of insurance has been issued, and the company causes the risk to be placed, in part, in another company, and the first named company becomes insolvent, in case of loss the assured has a right to share pro rata in the assets of the Insolvent eompany, and the amount paid by the second company which re-insured the first, becomes part of the assets of the insolvent company.—*Goodrich's Appeal.*—Filed Oct. 5, 1885.—Penn.

FORGERY—ANTEDATING THE FORGED INSTRUMENT—STUPIDITY IN NOT DETECTING FORGERY.—The forging of an order for the hire of livery, *held* to be a written instru. ment within the meaning of the statute. Antedating the forged instrument, 1881 instead of 1885, does not change the character of the crime and the defendant cannot escape punishment on the ground of the stupidity of the victim of the forgery, in not detecting the same. If the instrument is set out in the indictment, it is not material if the instrument be wrongly denominated. *Garmire* v. *State.*—Filed Jan. 5, '86.—Ind.

FRAUDULENT CONVEYANCE——CHATTEL MORTGAGE—MORTGAGOR DISPOSING OF THE GOODS.—Where the mortgagor of chattels is allowcd to retain possession of the mortgaged property, and sell and dispose of the same without payment of the proceeds to the mortgagee, such mortgage will be held void. A chattel mortgage is not void because it was intended to prefer the morgagee to other creditors.——*Bannon* v. *Bowler.*——Filed January 15, 1886.—Minnesota.

GARNISHMENT—TRANSFER OF ACCOUNTS BY DELIVERY.—Where a chattel mortgage was made by a debtor to a creditor on all goods, books of account, moneys, credits etc., of the mortgagor, and subsequently the property and the books of account were delivered to the mortgagee, another creditor obtains judgmeut against the nortgagor, aud garnishees the accounts due the debtor. *Held* that title had passed to the mortgagee by the delivery of the books of acconnt, and the account could not be garnisheed. —— *Clark et al* v. *Wiss et al.* ——Filed January 9, 1886.——Kansas.

GAS COMPANY—HAS NO RIGHT TO LAY PIPE UNDER A ROADWAY.—A company engaged in producing and furnishing gas to consumers, has no right to lay its pipes under a roadway, and if it had the right, it must procure the permission of the owner of the land through which the roadway runs. Until it does so an injunction may be obtained against its proceeding.—*Sterling's Appeal.* —Filed January 4. 1886.—Penn.

GRAND JURY—IRREGULARITY IN SUMMONING JURORS—SELLING INTOXICATING LIQUORS BY A DRUGGIST.—Where grand jurors are summoned but do not attend, and the judge gives the names of certain parties to the sheriff, and orders them summoned, the proceeding will be held to be regular. A druggist who has obtained a permit to sell intoxicating liquor, is thereby authorized to sell only in his drug store, or place of business, and not elsewhere. —— Filed January 9, 1886.—Kansas.

HABEAS CORPUS—MALICIOUS PROSECUTION—COMPLAINING WITNESS A PARTY.—The complaining witness who instigates a criminal prosecution, maliciously and without probable cause, in a sense makes himself a party to it. His position is similar to that of a party who signs as surety an undertaking for the return of property replevied.

Such party becomes a *quasi* party to the suit, and is liable together with his principal upon failure to maintain the action.—*State* v *Smith.*—Filed Jan. 12, 1886.—Wis.

HIGHWAYS—LOCATION BY VIEWERS.—PETITION.—Where, in locating and opening a road, the viewers vary the route from that located by the surveyor, and the road is opened by the overseer as located by the viewers, it will be held as established where opened by the overseer. Before a review of a road can be had, twelve householders of the county must request the same by a petition.——*Shaffer* v. *Welch.*—— Filed January 9, 1886.—Kansas.

HIGHWAYS—VIEWERS APPOINTED WHO DO NOT ACT—JURISDICTION.—Where the county commissioners appoint viewers to lay out a road, and such viewers do not act or make any report, the county board has no jurisdiction to establish the road. Where the record recites that two of the viewers made a report, but the report does not coincide with the record, the report will prevail over the record.—*State* v. *Horn.* —Filed Januaay 9, 1586.—Kansas.

HOMESTEAD—CO-TENANT——EQUITABLE DEFENSE.—A co-tenant is not entitled to a homestead right on the common property. In an action for partition where there were five tenants in common, where one of the shares was attached to the share of defendant in an execution, it is *held* that the judgment lien extended to the share thus attached. In an action for partition brought on a legal title, if an equitable defense be set up the court may adjudicate upon all the rights of the parties.——*Lynch* v. *Lynch.*— Filed January 6, 1886.——Nebraska.

HOMICIDE—LIABILITY OF ALL PARTIES IN AN AFFRAY FOR THE ACT OF ANY ONE. —Where a number of persons combine for the purpose of resisting an attack of an opposing party, and one of the party kills one of the attacking party, it being incidental to the common purpose of the parties, each one of the persons engaged in the affray, is liable for the killing.—*Weston* v. *Commonwealth.*—Filed Jan. 4, 1886.—Penn.

HOMICIDE—INSTRUCTIONS —INSANITY.—Where in a trial for murder in the first degree, the undisputed evidence shows deliberate murder, it is not error for the court to instruct the jury, that there was no evidence that would bring the case within any of the degrees of homicide, other than murder in the first degree, although the question of insanity was raised, and some testimony had on that point. Where insanity is set up, the burden of proof is on the defendant.—*State* v. *Hanley.*—Filed Jan. 18, '86.—Minu.

HUSBAND AND WIFE—SEPARATE ESTATE OF A FEME COVERT.—A husband may act as agent of his wife in carrying on a business for their mutual benefit, on capital fnrnished by the wife. One who indorses the note of a *femme covert* on the strength of her separate estate, cannot have recourse on her separate estate for the same.—*Schuster* v. *Kaiser and wife.*—Filed Jan. 4, 1886.—Pa.

INDICTMENT—SUFFICIENCY OF——MALICIOUS TRESPASS—FAILURE TO STATE THE VALUE OF PROPERTY INJURED.—In an indictment for trespass it was charged that the defendant did, "unlawfully and maliciously injure a certain milch cow, the property of Ira Bevil, then and there bring, and there unlawfully and maliciously running, striking, and beating said cow with a whip, stick and club," etc. *Held* that although vague, it sufficiently charges the crime. Where it is averred that the owner is damaged in a certain sum, the value of the property injued need not be stated.——*Sample* v. *State.* —Filed Dec. 30, 1885.—Ind.

INDEBTEDNESS OF CITIES—TAXES—BASIS OF ASSESSMENT.—The limitation of assessment and indebtedness of cities, in the constitution, is based upon the valuation of taxable property, which includes occupations.

In making a contract for the erection of a public building, the county commissioners may base their estimate of the cost, on the last assessment made in the county.—*Brown's Appeal.*—Filed Jan'y 4, '86.—Pa.

INJUNCTION—WHEN IT SHOULD BE DISSOLVED—Where an injuction is granted and the facts on which it was prayed are denied by a preponderance of evidence, on motion by defendant, the injunction should be dissolved. Where an injunction was granted on a prayer supported by the affidavit of one only, and a motion to dissolve, the facts set up in the petition, were flatly contradicted by numerous affidavits and the court refused the motion to dissolve. *Held* error.—*Appeal of New Era Life Association.*—Filed Nov. 2, 1885.——Penn.

INSANE HOSPITAL—TAXES FOR—WHEN THE COUNTY IS LIABLE.—A county is liable for the expense of the care of insane persons who have a legal residence in the county, and a tax therefor is a county tax which should be levied by the proper county officer. If levied upon all taxable property of the county, it is valid.—*State* v. *Douglas Co.*——Filed January 6, 1886.—Nebraska.

INSOLVENCY—ASSIGNMENT—BILL OF EXCEPTIONS.—Where a firm is insolvent and the other partners sell and transfer all their interest to one member of the firm, and three days later the firm makes an assignment for the benefit of their creditors, such sale is invalid. A creditor is not estopped from suing his debtor, by reason of his having made an assignment. Exhibits included in a bill of exceptions, marked by the initials of the judge, are sufficiently identified, and will not be stricken out.—*Moorehead* v. *Adams.*—Filed Jan. 6, 1886.—Neb.

INTERMINGLING LOGS—DRIVING THE LOGS OF ANOTHER—PARTNERSHIP.—Where logs of different owners become intermingled, one of the owners has no right to drive the logs of the other. One member of a partnership, has no power to bind his copartners by a submission to arbitration of controversies relating to the firm's business.—*Walker* v. *Bean.*—Filed Jan. 18, 1886.—Minn.

INTOXICATING LIQUORS—BOND OF DEALER—APPROVAL OF VILLAGE.—When a liquor dealer executes a bond in accordance with the statute, it is the duty of the village council to which it is presented, to approve the same, and upon refusal to do so, upon failure to show good cause, a peremtory writ of mandamus will issue.—*Potter* v. *Village of Homer.*—Filed Jan. 13, 1886.—Michigan.

INTOXICATING LIQUORS—SEVERAL ILLEGAL SALES CHARGED—ELECTION OF PARTICULAR SALE.—In a prosecution for the sale of intoxicating liquors illegally, where the prosecution elects a particular sale on which they rely, it is not necessary to state what particular kind of liquor was sold, but they must state the time and place of the particular sale charged—*State* v *Guetler.*—Filed January 9, 1886.—Kansas.

JURISDICTION OF JUSTICE OF THE PEACE.—TRESSPASS—EVIDENCE.—In an action of trespass before a justice of the peace, the defetdant must plead title in himself and give bond, or he will not be permitted to prove title in himself, or in one under whom he justifies.—*State* v. *Annesse.*—Filed November 1885.—New Jersey.

JUDGMENT ON PLEADINGS—STATUTE OF LIMITATIONS—WAIVER.—When the complaint fails to state a cause of action, judgment may be given in favor of defendant. The defendant cannot avail himself of the benefit of the statute of limitations, unless he set up the same in his answer or by demurrer.——*Kelley* v. *Kreiss.*——Filed December 21, 1885.—California.

LANDLORD AND TENANT—LEASE—LESSOR TO PAY FOR IMPROVEMENTS MADE BY LESSEE.—Land is leased for a term of five years with an agreement that the lessor shall pay

the lessee for certain improvements to be made by him, at the expiration of the term. The lessee erects a building worth $500. During the term, lessor conveys the land to another, with notice of the terms of the lease. At the expiration of the lease, in an action of ejectment brought against the lessee, it is *held* that he has a right of possession, until he is paid for the improvements which he has made.—*Ecke* v. *Eitzer*.—Filed Jan. 12, 1886.—Wis.

LANDLORD AND TENANT—LANDLORD AND FAMILY BOARDING WITH THE TENANT—NOTICE TO QUIT.—The owner of a farm leases certain lands and premises, and subsequently obtains permission to occupy certain rooms in the dwelling and contracts for board for himself and family with the lessee. The tenant falling in arrears in rent, the lessor distrains certain property for rent, and the lessee replevies. In the trial the court instructs the jury that the plaintiff is "entitled to have deducted, by way of equitable defense, the rental value of four rooms, which he alleges were occupied by the defendant, etc." *Held* that the charge was error. *Shoemaker* v *Beaver*.–Filed Oct. 19, '85.–Pa.

LARCENY—CONCEALING STOLEN GOODS—ARREST OF JUDGMENT.—In an indictment for concealing stolen goods, if the fact appear that some of the goods were not stolen, after a verdict of guilty, the defendant cannot take advantage of that fact, by motion in arrest of judgment.—*State* v. *Gerrish*.—Filed December 16, 1885.—Maine.

EVIDENCE——IMPEACHMENT OF TOWN TREASURER'S BOOKS.—The testimony of a town treasurer that he did not receive certain moneys alleged to have been paid him, supported by his books of account, cannot be impeached by the evidence of the town auditor, by showing that errors were found to exist in the treasurer's accounts—*Burnham* v. *Town of Strafford*.–Filed Jan. 10 '86.–Vt.

LIEN ON LOGS AND LUMBER——INDEPENDENT CONTRACTOR—LIEN FOR LABOR PERFORMED.—One who contracts with the owner to drive and deliver logs or lumber, may have a lien on the property for the labor performed, and he may enforce his lien by attachment, when the lumber is not in his possesion. He may also have a judgment *in per sonam*.—*Shaw* v. *Bradley*.—Filed January 20, 1886.—Mich.

LIEN—ON LUMBER MANUFACTURED—HOW ENFORCED.—The common law which allows the manufacturer of lumber to have a lien on the lumber manufactured, has not been abrogated by statute, and one who has sawed logs into shingles, or otherwise manufactured it, may have his lien, which he may enforce through the equity jurisdiction of the court.—*Arias* v *Brickley*.—Filed December 23, 1885.—Wis.

MANDAMUS—COUNTY CLERK—NON PAYMENT OF FEES—RIGHT OF PRIVATE PARTY TO SUE OUT WRIT.—Where a county clerk has in his hands moneys received as fees, which he refuses to pay over to the collector on the ground that the statute requiring him to do so, is unconstitutional, tax payers cannot sue out a writ of *mandamus* compelling him to pay over the money. The general rule is that a private individual applying for a writ of *mandamus* must show in himself a specific legal right, and the want of a specific legal remedy. The remedy is an action by the collector.—*State Ex Rel Bamford* v *Hollingshead*.—Filed Nov.'85.—N. J.

MASTER AND SERVANT—INJURY TO EMPLOYE.—It is a well established rule, that where a railroad company uses due diligence in selecting prudent and careful employes, it is not liable for injuries received by one, through the negligence of another. Where a brakeman in endeavoring to uncouple cars while the train is in motion, is injured by reason of want of repair in the road-bed, the question of negligence is one for the jury.—*Garduer* v. *Mich. Central Ry. Co.*—Filed January 6, 1889.—Michigan.

MASTER AND SERVANT—CONTRACT OF EMPLOYMENT FOR ONE YEAR—TEMPORARY ABSENCE OF EMPLOYE.—Where a foreman in a packing house was employed for one year on a contract, and he absented himself for one day, to attend to his personal business, against the wishes of his employers, it is *held* that the question as to whether he was guilty of such a breach of the contract as would warrant his employers in discharging him and rescinding the contract, was a question for the jury.—*Shaver* v *Ingham*—Filed Jan. 6, 1886.—Mich.

MASTER AND SERVANT——NEGLIGENCE OF FELLOW-SERVANT.—Where a man who is one of a gang of men employed on a construction, is injured by a fellow-laborer, who negligently lets a stone fall upon him and injures him, the company is not liable for damages for the injury.—*Mation* v. *C. R. I. & P. Ry. Co.*—Filed Dec. 16, 1885.—Ia.

MARRIED WOMEN——SEPARATE DEED—STATUTE OF LIMITATIONS.—A deed executed by a married woman in which her husband does not join is void, yet it has an effect to give color of title. The statute of limitations runs against persons under disability from the time the right of action accrues. The exception in favor of such parties, is that the limitation is extended two years, in which they may have their action.—*Wright* v. *Kleyla.*—Filed Dec. 11, 1885.—Ind.

MECHANIC'S LIEN—WHEN THE LIMITATION BEGINS TO RUN.——Where a material man furnishes material for a building as the building progresses, and renders his account in different items, the account is to be treated as a whole and the limitation in which a lien may be filed, commences to run from the date of the last item furnished. Whether a certain item belongs in the account as charged or not, is a question of fact for the jury to determine.—*Frankovis* v *Ireland.*—Filed January 11, 1886.—Minn.

MECHANIC'S LIEN—VOID—AN ACTION TO REMOVE CLOUD FROM TITLE.—Where a claim for a mechanic's lien was filed and subsequently deciared null and void, the owner brings an action to compel the claimant to give a certificate discharging the claim for a lien. *Held* that the complaint was not sufficient, in that it did not allege that there ever was a lien, it did not set forth the character of the account so that the court can say that they even had the appearance of a lien.——*Houlchan* v. *Keller.*——Filed January 11, 1886.—Minn.

MECHANIC'S LIEN—FORECLOSURE — MISNOMER IN PUBLISHED NOTICE.—In an action to foreclose a mechanic's lien, the notice published represented the name of one defendant as P. T. B. Hopkins, whilst it should have been T. P. B. Hopkins. *Held* that the notice was sufficient, and that the court had jurisdiction in the case.——*Fanning* v. *Krapfell.*——Filed December 21, 1886.—Iowa.

MECHANIC'S LIEN—MORTGAGEES MUST BE MADE DEFENDANTS.—In a contest between the holder of a mechanic's lien and a mortgagee, as to priorality of lien, if shown that work was commenced before the recording of the mortgage, the mechanic's lien will take precedence of the mortgage. The statute in such cases, provides that the mortgagee must be made party defendant.—*Cox, et al,* v. *Flanigan et al.*—Filed Dec. 30, '85.—N.J.

MECHANIC'S LIEN—JOINDER OF ACTIONS—FORECLOSURE.—In an action by lienors to foreclose a mechanic,s lien, the defendant is entitled to separate trials as to each lien, but if after demanding separate trials and being refused, if he withdraws his answer as to one of the lienors, he waives his right to exception.—*Curnow* v. *H. V. B. G. & H. Miuing Co.*—Filed Dec. 21, '85—Cal.

MONEY PAID INTO COURT—INTEREST ON.—Where money has been paid into court in satisfaction of judgment, and lies there pending an appeal, if the party to whom the fund

belongs is allowed to use the fund, he is not chargable with interest on the amount which ultimately becomes his, but if he has been allowed to use more than his share, he is chargeable with interest on such excess.—*Withall* v. *Cressman.*—Filed Jan. 6, '86.–Neb.

MORTGAGE—PROMISSORY NOTE WITH ATTORNEY'S FEE.—Where a promissory note is given, including usurious interest, and is transferred to a third party for value without notice, the endorsee takes it free from the defense of usury. Where a note includes an attorney's fee and where in entering judgment on the same, the court fixes the amount of the attorney's fee, such order or judgment will not be disturbed on appeal.—*Sedgwick* v. *Dixon.* Filed Jan. 6, '86.—Neb.

MUNICIPAL CORPORATION—ABSENCE OF SIDE-WALKS OR CROSS-WALKS——RIGHT OF CITY AUTHORITIES TO DETERMINE WHERE SUCH IMPROVEMENTS SHALL BE MADE.—In an action to recover for personal injury arising because of the absence of a cross-walk at a certain place where there was a crossing of streets, it is *held* that plaintiff could not recover. There never had been a cross-walk made at the place named where the accident occurred, and the city had a right to determine where and when such improvements should be made.—*Willioms* v. *City of Gr. Rapids.*–Filed Jan. 13,'86.–Mich.

MUNICIPAL CORPORATION–INJURY CAUSED BY DIVERSION OF SURFACE WATER.—Where, by the improvement of streets, by the construction of gutters for conveying the surface water off, the gutters are so constructed as to discharge the water upon land, and thereby cause injury to said land, the municipality is liable for all the damage thus caused to the land.——*Fields* v. *West Orange.*—Filed October 1885.—N. J.

MUNICIPAL CORPORATIONS—POWER TO REGULATE OCCUPATIONS AND TO ESTABLISH FIRE LIMITS.—The board of supervisors of the county of San Francisco, has power to regulate all occupations bearing upon the good morals of the city and to establish and regulate of what materials buildings shall be constructed within certain limits, in the city of San Francisco. To deny the use of a frame building for laundry purposes is within the powers of the board. Such regulations however, must apply to all persons indiscriminately.—*In Re Yick Wo.*—Filed December 28, 1885.—Cal.

MUNICIPAL CORPORATION——PRIVATE RAILWAY COMPANIES— INJUNCTION.— The city authorities have no right to grant the use of a street for a private railway company. The statnte authorizing such grant of the use of a street, contemplates only its use by a public or *qnasi* public corporation, as a common carrier. Any such grant to a private corporation, may be enjoined by any property owner whose interest is affected thereby.——*Mikesell* v. *Dunkee.*——Filed January 9, 1886.—Kansas.

MUNICIPAL CORPORATION——STREETS CROSSING RAILWAY TRACK—MEASURE OF DAMAGES.—Where a city opens up or extends streets which cross a railway track within the city limits, the company is entitled lo damages. The measure of damages is not the value of the isolated land, but includes all the expense imposed upon the railway company by reason of the crossing, in making and keeping it safe to the public. —*In Re opening First Street.*——Filed January 6, 1886.—Michiganr

MUNICIPAL CORPORATIONS—DEFECTIVE SIDEWALK—NOTICE.—Notice to a member of the city council, of a defect in sidewalk, is sufficient to fix the liability of the city for injury suffered by reason of the defect, if the notice refer to that particular defect by which the injury is caused.—*Carter* v. *Monticello.*—Filed Dec. 19, 1885.—Iowa.

MUNICIPAL CORPORATIONS — DEFECTIVE SIDEWALKS—PROOF OF NEGLIGENCE.—The construction of a sidewalk in such a man-

ner that an ordinary fall of snow renders it unsafe, is defective, but where a sidewalk is properly constructed and it is rendered unsafe by a sudden accumulation of ice, and an accident occurs thereby, the city is not liable for damages for an injury thus caused. —*Grossenbach* v. *City of Milwaukee*— Filed Dec. 23, 1885.—Wisconsin.

NEGLIGENCE—PROXIMATE CAUSE OF INJURY—LYING DOWN ON TRACK.—One who, by his willful wrong, approximately contributes to an injury, cannot recover damages therefor. A person who, in a state of intoxication, lies down on a railway track, is guilty of gross negligence, and yet the company is bound to use reasonable care to avoid injuring him.—*Williams* v. *S. P. Ry. Co.*—Filed Dec. 58, 1885.—Cal.

NEGLIGENCE—BLOWING OF THE WHISTLE UNNECESSARILY BY ENGINEER——INJURY CAUSED TO TRAVELLER ON ADJACENT HIGHWAY.—Where the sounding of the whistle on a locomotive while crossing a bridge over a highway, caused a team of horses to run, causing injury, and where it was not shown that the blowing of the whistle was improper or unnecessary, no recovery can be had for the injury. The blowing of the whistle, although in close proximity to a highway, is not negligence *per se.*—*C.L.St.L.* & *C.RyCo.* v. *Gaines.*—Filed Dec. 29, 1885.—Ind.

NEW TRIAL—ABSENCE OF MATERIAL WITNESSES.——Where a material witness arrives too late to testify, but is present when judgment is rendered and all the witnesses and parties are then present, if the party against whom judgment has been rendered, fails to make a motion for a new trial on the ground of the absence of a material witness,he cannot have his case reviewed in the appellate court on that ground. The time to have the matter considered was when the parties and all witnesses were present.—*Ketchum* v. *Breed.*—Filed Jan. 12, '86.—Wis.

NEGLIGENCE—OBLIGATION OF A CITY TO KEEP STREETS IN REPAIR.—In an action for damages for personal injury, it is error for the court to charge that unless plaintiff was negligent *in a material degree*, he is entitled to recover. A municipal corporation is not bound to keep the streets in the outer limits and unsettled part of the city, in the same degree of repair, that is required in the central or densely settled part. It is sufficient, if the central part of the roadway is in good condition.——*Monongahela City* v. *Fiiher.* —Filed Jan'y 4, 1886.—Penn.

OFFER TO CONFESS JUDGMENT—TENDER. —Where a case is pending in court, and the defendant files in the office of the clerk of the court, an offer in writing, to confess judgment for a certain amount, but snch offer was not made to the plaintiff, nor his attention called to it, will not amount to a tender, and does not bar judgment for the costs which accrue after the filing of such offer, where the final judgment obtained did not exceed the amount which he offered to confess judgment for.——*Rose* v. *Peek.*—— Filed January 6, 1886.—Nebraska.

PRIVILEGED COMMUNICATIONS——STATEMENTS MADE TO AN ATTORNEY.—Where a party goes to an attorney for the purpose of employing him in a certain case, any statements then made to the attorney by the party are not privileged, although the attorney may have been previously acting as the general counsel of the party.—*Clay* v. *Tyson.* —Filed Jan. 6, 2886.—Neb.

PAYMENT—SUPPORTED ONLY BY TESTIMONY OF THE PLAINTIFF—CONFLICTING TESTIMONY.—In an action on a promissory note, a plea of payment,*inter allia*,was set up, and the plea sustained only by the testimony of plaintiff. There was evidence to show a partnership between the plaintiff and defendant, and circumstances connected with the case cast a doubt upon plaintiff's testimony. Judgment was rendered for defendant, and upon appeal it is reversed and remanded for a new trial. *VnB'sk'k* v *Ch'ndl'r.* Jan. 6,'86.Neb.

PARTNERSHIP——INSOLVENCY——PARTNER USING FIRM FUNDS IN PAYMENT OF INDIVIDUAL DEBT.—Where one partner uses funds of the firm, which is insolvent, in payment of his individual debts, it is no ground for an attachment. Where such attachment issues, on the ground that the firms goods are being disposed of in fraud of creditors, and the firm makes an assignment for the benefit of its creditors, after the assignment they may traverse the affidavit on which the attachment issued. —*Keith* v. *Armstrong*.—Filed Feb. 2, 1886.——Wis.

PATENT TO MINING CLAIM—DISPUTED TITLE.—A patent for a mining claim relates back to the date of location. Any one claiming land as against a patent, must show adverse possession before the issue of the patent.—*Talbott* v. *King*.—Filed Jan. 7, 1886.—Cal.

PLEADING—ACTION TO QUIET TITLE—WAIVER OF DEMURRER.—In an action to quiet title, one who holds the legal title should be made defendant, and may be brought in by an amendment of the complaint. A joinder of an action to recover real property, with an action against the defendant as trustee, is erroneous. Such misjoinder may be taken advantage of by demurrer.—*Reynolds* v. *Lincoln*.—Filed Dec. 28, 1885.—Cal.

PLEADING —AMBIGUITY—SURPLUSAGE—The fact that a complaint is in some degree ambiguous, by reason of its containing several counts, cannot be taken advantage of by general demurrer. A special demurrer may be interposed to the particular ambiguous matter. The citing of the particular statute under which the action is brought, in an action for trespass on land, is surplusage and may be stricken out.—*Demartin* v. *Albert*.—Filed Dec. 28, 1885.—Cal.

PLEADING—STATUTE OF LIMITATIONS—INJURY TO CATTLE.—It is too late after final judgment on demurrer, to take exception to the filing of demurrer out of time. Where a petition shows on its face that the action is barred by the statute of limitations, a demurrer on the ground that the petition does not show a cause of action, will be sustained. The statute of limitations will run against a claim for damages for the loss of cattle killed on a railroad by reason of the failure to fence the track.—*Seymour* v. *P. & St. L. Ry. Co.*—Filed Jan. 26, 1886.—Ohio.

PLEADING—AMBIGUITY——SEPARATE DEFENSES.—The failure to state several defences separately, in an answer, is not ground for demurrer. Where an answer is ambiguous, in that it may be taken as a plea of the statute of limitations, or an equitable defense, it may be taken advantage of by demurrer.—*Casey* v. *Jordan*.—Filed Jan. 22, 1886.—California.

POSTHUMOUS DEED—DELIVERY IN ESCROW—CONDITION PRECEDENT.—A deed executed but not delivered until after the death of the grantor. is void. Such deed may be delivered in escrow but without any condition precedent to be performed after the death of the grantor. Where a deed was thus delivered, and the holder instructed to deliver the deed to the grantee after the grantor's death, upon the grantee signing a note for a given sum, which was written and deposited with the deed. *Held* that the deed was void.—*Taft* v. *Taft*.—Filed Jan. 20, 1886.—Mich.

PRACTICE—PARTIES AS WITNESSES—INSTRUCTIONS.—Where parties in an action against a decedent's estate are permitted to testify, and an appeal is taken, the appellate court will not review the ruling of the court in admitting the testimony, unless the whole testimony appears in the record. Where the record does not show a request to instruct in writing, the court will not consider whether the instructions were in writing or not.—*Clanser* v. *Buckman, Acm'r.*—Filed Jan. 8, 1886.—Ind.

PRACTICE—CHALLENGE TO THE ARRAY.—Where the court orders additional jurors drawn, and in the order specifies the box

from which said jurors shall be drawn, and the drawing of said jurors is done in open court, a challenge to the array will not be sustained, although the other two boxes were not in court at the time.—*People* v. *Kiernan.*—Filed Jan. 19, 1886.—N. Y.

PRACTICE—GENERAL AND SPECIAL VERDICT.—When a jury is requested by either party to return a special verdict, they should do so. In the absence of any request made they may return either a special or a general verdict at their option. If after request for a special verdict they return also a general verdict, it may be disregarded, and if so disregarded it will not materially affect the result.—*L. N. A. & C. Ry. Co.* v. *Balch.* —Filed Jan. 19, 1886.—Ind.

PRESUMPTIONS OF FRAUD IN CONVEYANCE BY HUSBAND TO WIFE—GRANTEE OF THE WIFE.—Where land has been conveyed by a husband to his wife, and the wife has conveyed it to another, the presumption of fraud does not rest upon the wife's grantee, but upon the party attacking the validity of the transfer by the husband to the wife. Where it is alleged that the wife's grantee had notice of the fraud, such allegations may be supported by such circumstanres as would put a prudent man upon inquiry. The question of fraud is one of fact for the jury to determine.—*Hoosier* v. *Hunt.*—Filed Jan. 12, 1886.—Wis.

PRESUMPTIONS OF DEATH BY ABSENCE—MAY BE ESTABLISHED IN LESS THAN SEVEN YEARS.—The established rule that seven years absence supports the presumption of death, may be varied by circumstances so as to warrant such presumption in a shorter time. See *Tisdale* v. *Conn. Mutual Life Ins. Co., 26 Ia. 170.* Where a man left his house in the morning to attend to his ordinary bnsiness, and being a man of good moral character and habits of life, and no known cause or motive for him to abandon his family, and from the moment of thus leaving his home he is never after seen or heard from by them, although dilligent search is made for him, in an action to reform a deed, where the question is as to his then being alive, five years after he had thus left his home, it is *held* that the circumstaaces surrounding his abandonment of his family justify the presumption of his death.—*Cox* v. *Ellsworth.*—Filed Jan. 6, 1886.—Neb.

PRELIMINARY EXAMINATION—SECONDARY EVIDENCE.—When an arrest is made and a preliminary examination had before the magistrate issuing the warrant, and the defendant is committed, and subsequently arraigned on an information filed by the prosecuting attorney, the papers which show that a preliminary examination was had being lost, it is competent to prove their contents by oral testimony. A challenge to the array, on the ground that no list of jurors was returned from one certain township before the drawing of the jury, will not be sustained.—*People* v. *Coffman.*—Filed Jan. 13, 1886.—Mich.

PRINCIPAL AND AGENT—ADMINISTRATOR—POWER OF ATTORNEY TO CREDITOR.—An administratrix executed a power of attorney authorizing said attorney to collect rents which decedent had pledged as security for a debt. The attorney so appointed being also the agent of a creditor of decedent, collected the rents and paid them to his principal. *Held*, that the administratrix could recover only the money in excess of the debt due the creditor.—*Adams, Adm'x* v. *Smith.*—Filed Jan. 20, 1886.—Neb.

PRIVATE ROADS—LAYING OUT—VARIANCE BETWEEN ORDER AND APPLICATION.—In laving out a private road, it is not necessary that the precise course be indicated in degrees and minutes by use of the compass, where the course can be ascertained by other particulars in the application. Where the order and the applidation vary from each other materially in the location of the road, it is fatally defective.—*Satterlee* v. *Winne.*—Filed Jan. 19, 1886.—N. Y.

PRINCIPAL AND AGENT—AGENT MAY PURCHASE OF HIS PRINCIPAL—GOOD FAITH MUST BE MANIFEST.—An agent for the sale of property cannot sell to himself, but if he discloses all the facts in his confidential relation to his principal, and acts in good faith, he may purchase of his principal. If such a sale be challenged within a reasonable time the burden of proof is on the agent to show entire good faith in the transaction, and that he imparted to his principal all the information he had concerning the property, before the sale was made.—*Rochester* v. *Levering*.—Filed Jan. 9, 1886.—Ind.

PROMISSORY NOTE—FRAUD IN OBTAINING IT—LIABILITY OF MAKER.—In the absence of fraud in obtaining the signature, the maker of a promissory note will be held liable thereon. A person who makes a promissory note, cannot set up in defense of payment that he did not understand that he was binding himself for the payment, if no fraud or deceit is practiced on him, and he is of sound mind and has the legal capacity to enter into a contract.—*Jackson* v. *Olney*.—Filed Oct. 24, 1885.—Mass.

PROMISSORY NOTE—SET-OFF— HUSBAND CONTRACTING WITH HIS WIFE.—One who purchases a note for a mere nominal consideration, agreeing to pay to the payee, one half of the proceeds of the note when collected, cannot off-set the note in an action of debt. Where a husband agreed with his wife to repay money, which she loaned him, to her children, and does repay it by assigning a promissory note, such assignment is founded on a good and valid consideration.—*Proctor* v. *Cole*.—Filed Jan. 20, 1886.—Ind.

PURCHASE BY GUARDIAN OF HIS WARD'S PROPERTY—VALIDITY OF.—Where, at a guardian's sale of real estate, a third party bids and the sale is made to him, but in fact he buys for the guardian, and on the same day in which he receives his deed he executes a deed conveying the property to the guardian, the court having confirmed the sale and the ward himself approves and ratifies the sale, it is valid and the guardian together with his bondsmen, are liable on their bond for the puchase price.—*Schur's Appeal*.—Filed Jan. 18, 1886.—Penn.

QUIETING TITLE—CROSS-COMPAINT—DEMURRER.—A cross-complaint to quiet title must describe the land in question, and aver that the party against whom the complaint is directed, claims some adverse interest in the land which is not founded in equity or law.—*Conger* v. *Miller*.—Filed Jan. 20, 1886.—Ind.

RAILROAD COMPANIES—CROSSING OF TRACKS—DAMAGES.—Where one railroad seeks to lay its track across the track of another road, it may do so by the right of eminent domain, but it must pay damages equitably and properly assessed for the privilege thus obtained. If the road establishing the crossing, makes an agreement with the other road that the former will defray all expenses caused by the crossing, and on that ground the court makes the assessment of damages very light, such ruling is strongly disapproved.—*C. & W. I. Ry Co.* v. *Eng. C. Ry Co.*—Filed Jan. 25, 1886.—Ills.

RAILROAD AID TAX—COLLECTION CANNOT BE ENJOINED AFTER THE ROAD IS CONSTRUCTED.—Where a township has voted a certain amount in aid of building a railroad through the township, and the road has not been completed until after the time in which it was agreed it should be built, after the road is completed, it is too late for the township to refuse to pay the tax and to seek to restrain the collection of the same, unless the county commissioners declared a forfeiture in accordance with the statute.—*Nixon* v *Campbell*.—Filed Jan. 20,'86.—Ind.

RAILROAD COMPANIES—RIGHT OF WAY—ASSESSMENT OF DAMAGES.—In an action for damages for land taken for right of way for a railroad, witnesses were allowed to testify

as to their opinion what the damages were, taking into consideration the risk from fire caused by the running of trains, and it was not shown in evidence how close to the track the farm buildings were situated. *Held* that the evidence was properly admitted.—*Stillman* v. *N. P. F. F. & B. H. Ry Co.*—Filed Jan. 18, 1886.—Minn.

RAILROAD COMPANY—DIVERSION OF STREAM OF WATER—LIABILITY FOR DAMAGES.—A railway company which diverts the course of a neighboring stream of water so as to carry it on their own land may do so the same as an individual, if no damage is caused to any one by the act, but where a stream is thus conducted for a distance and then allowed to discharge and flow upon adjacent lands owned by another, thereby causing damage to the land overflowed, the company is liable for the damages so caused.—*Valley Railway Co.* v. *Franz.*—Filed Dec. 15, 1885.—Ohio.

RAILROAD AID TAX—TRANSFER OF ROAD—VOTING OF TAX AFTER NOTICE OF TRANSFER.—Where taxes are voted in aid of a railroad company, after notice of a sale and transfer of the corporate franchise of the company, the collection of the tax cannot be enforced. The fact that the taxpayers permit the company which purchased the franchise to go on and build the road without objection, will not bar their defense to the collection of the tax.—*Blunt* v. *Carpenter, Co. Treas.*—Filed Feb. 2, '86.—Ia.

REAL ESTATE—CONTRACT OF BROKER—WHEN COMMISSIONS ARE EARNED.—Where property is placed in the hands of a broker to sell, without limitation as to time, the contract of the broker is to bring the buyer and seller together on the terms offered, and when he has produced a buyer who is ready and willing to buy on the terms offered, if the owner refuses to consummate the sale, he will be liable for the amount of the commission to his broker.—*Fisk* v. *Henarie.*—Filed Jan. 11, 1886.—Oregon.

REAL ESTATE AGENT—CONTRACT TO SELL—WHEN COMMISSION IS EARNED.—If a real estate agent enters into a contract with owner of property, to procure a sale within a specified time, for which he is to have an agreed commission, and he fails to bring about, or cause a sale to be perfected within the time specified, he cannot recover the agreed commission, although the property was subsequently sold to a party with whom negotiations were commenced by said agent.—*Fultz* v. *Weiner.*—Filed Januaro 9, 1886.—California.

REPLEVIN—WHERE THE ACTION LIES—BANKRUPTCY.—The action of replevin will lie wherever there is a right of possession, whether the plaintiff has an absolute or qualified title to the property. An adjudication in bankruptcy is no bar to replevin.—*Miller* v. *Worden.*—Filed Jan. 4, 1886.—Penn.

RELIGIOUS SOCIETY—FORCE OF THE USAGE IN THE CHURCH—PRIEST MAY RETAIN PEW-RENT IN EXCESS OF CHURCH EXPENSES.—The right of a priest to collect and retain pew-rent as payment of his salary, is to be determined by the custom and usages of the church. These laws and usages of the church may be proven by persons familiar therewith, and by authoritive writers on the subject. *Held* that a priest may appropriate the pew-rents received, in payment of his salary, after paying the current expenses of the church out of the same.—*St. P. Cath. Ch.* v. *Daley.*—Filed Jan. 25, 1886.—Ills.

REPEAL OF A REPEALING STATUTE—REVIVOR OF FORMER STATUTE.—A statute enacted in 1866, forbade usurious contracts under a penalty. A subsequent statute of 1872 repealed the former and denied a plea of usury in an action on a contract. In 1882 an act was passed repealing the act of 1872, but it also provided that the rate of 12 per cent interest might be exacted if incorporated in the contract. *Held* that the general rule that the repeal of a repealing statute revives the original or former statute re-

pealed, did not apply in this case, as the repealing statute provided a substitute for the original.—*Milligan* v. *Cromwell.*— Filed January 19, 1886.—N. M.

RETURN OF DELINQUENT ASSESSMENTS—IRREGULARITY OF—NOTICE.— Assessments for drainage should be returned on or before the tenth day of the month next after the assessment shall have become payable. The failure to return the delinquent list to the collector before notice and time of payment was published, is inconsistent, but not fatal.—*People* v. *Clayton.*—Filed Nov. 14, 1885.—Ills.

RECISION OF CONTRACT—NOTE OBTAINED BY FRAUD.—Where a note originally given for machinery which was sold and delivered under a warranty, and when the note is due, the agent of the payee surrenders the note and takes another in its stead, in which he fraudulently inserts, or procures the insertion, of a clause waiving the warranty under which the original note was made, the remedy of the maker is not a recision, but *non est factum.* The making of the note in question waiving the warranty, is not his contract.—*Aultman* v. *Olson.*—Filed Feb. 1, 1886.—Minn.

RECEIVING STOLEN PROPERTY—FAILURE OF JUNK-DEALER TO KEEP BOOK—CHARACTER OF THE ACCUSED.—In a prosecution of a junk-dealer for receiving stolen goods, the fact that he did not keep a book in which he recorded a list of goods received, may be put in evidence. The good character of the accused may be properly put in evfdence also. Where a junk-dealer receives goods and he believes from the circumstances that they are either stolen or embezzled, he may be convicted of the crime charged, if the goods are actually stolen.—*Commonwealth* v. *Leonard.*—Filed Jan. 11, 1886.—Mass.

RULE ON ASSIGNEE TO PAY OVER MONEY—POWER OF COUNTY COURT TO IMPRISON.—The statute does not give to the county court, in express terms, the power to imprison an assignee for refusal to pay over moneys upon the order of the court, but the court has such power by implication. An agreement by the assignee with an appointee to pay over moneys, and giving a note as security therefor, does not oust the jurisdiction of the court to enforce payment.—*Frank* v. *Moses.*—Filed Jan. 25. 1886—Ills.

SALE—ACTION FOR PURCHASE PRICE, VENDOR RETAINING POSESSION.—On a contract to pay for a lot of iron when delivered at a certain warehouse, the seller delivered the iron, took a warehouse receipt for the same, and tendered the receipt to the purchaser and demanded payment. Payment was refused and an action brought against the purchaser, for the purchase price, the seller, meantime holding the warehouse receipt. In the meantime the purchaser makes an assignment for the benefit of his creditors; the question arises as to whether the assignee of the purhaser, or the seller, is now entitled to the goods stored in the warehouse. *Held* that the seller never lost the right of possesion, and he is entitled to a lien on the goods for the purchase money. —*Rhodes* v. *Mooney.*—Filed June 9,'85.—O.

SALE—CLASSIFYING GOODS—RETURN OF GOODS BY VENDEE.—One who orders a lot of merchandise consisting of different classes may, upon receipt and examination return, if the goods are not of the size, quality, or kind ordered, and the seller is bound to deduct from the aggregate bill, the pro rata price of goods returned. When goods are ordered in quantities and boxed, it is understood that they are subject to inspection and verification of the bill when opened and unpacked. A statement on a bill that claims for deduction must be made within a specified time, is of no force unless such statement was an express part of the contract.—*Cohen* v. *Pemberton.*—Filed Sept. 5, 1885.—Conn.

SALE AND DELIVERY OF GOODS—ASSIGNMENT BY THE PURCHASER—REPLEVIN.—Where merchandise has been sold and de-

livered, in default of payment, the creditor may elect whether he will sue on the contract or bring an action in replevin; but the election and bringing an action in replevin, estops him from filing his claim with the assignee where a general assignment has been made for the benefit of creditors. Where one elects between two inconsistent remedies, the right to pursue the other is forever lost.—*Farwell* v. *Myers*.—Filed Jan. 20, 1886.—Mich.

SALE OF ADULTERATED MILK—STATUTORY PROHIBITION OF.—A statute prescribing a standard of quality for marketable milk, being violated by one in the sale of milk, he was prosecuted and a fine imposed on him for violation of the statute. On appeal the judgment was reversed, on the ground that the statute was unconstitutional. The court of appeals now reverse the latter judgment and affirm the first, declaring the statute constitntional. "Wherever there is a general right on the part of the public, and a general duty on the part of the land owner or other person, to respect that right, we think it is competent for the legislature, by a specified enactment, to prescribe a precise, practical rule for declaring, establshing and securing such right."—*People* v. *Ciperly*.—Filed Jan. 19, 1886.—N.Y.

SAVINGS BANK—PAYMENT OF MONEY TO A STRANGER ON PRESENTATION OF PASS-BOOK.—Although a by-law of a savings bank provides that "all payments made by the bank upon the presentation of the pass-book, and duly entered therein, will be regarded as binding upon the depositor," be printed in the pass-book, and the depositor is familiar with the requirement, yet the bank is not justfied in paying the money to a stranger who presents the pass-book.— *Smith* v. *Brooklyn Savings Bank*.—Filed Dec. 22, 1885.—N.Y.

SALE—DISCLOSURE BY AGENT, OF PRINCIPAL'S NAME—FACT FOR THE JURY.—Where an agent enters into a contract for the delivery of certain goods at a certain time, and in the contract his principal for whom he acted, was denominated "the packer" and in an action on the contract, the question as to who was the principal for whom the agent was acting, becomes the main question in the issue, and on this point there is a conflict of testimony, the question was properly submitted to the jury.—*Dean* v. *Van Nostrand*.—Filed Jan. 19, 1886.—N.Y.

SCHOOL DISTRICT—POWER OF THE COUNTY SUPERINTENDENT TO CHANGE BOUNDARIES.—Where an application is made to the county superintendent to change the boundaries of a district, on the ground of inaccessibility of school, by reason of streams of water or other good cause, the superintendent has power, and it is his duty, to cause such territory to be set off to another district as will enable the complainants to enjoy school privileges, if it be reasonable or practical to do so.—*State ex rel Donovan* v *Palmer*.—Filed Jan. 6,'86.—Neb.

SCHOOL SUPERINTENDENT—ERROR OF JUDGMENT—MALICE IN WITHHOLDING LICENSE.—The act of a county superintendent of schools in licensing teachers, is not a judicial act, and yet his act is so analagous to a judicial act that he is not liable for an error of judgment. He may be held liable however, for a malicious exercise of his discretionary power, if he wrongfully withholds a license. In an action for damages, for wrongfully withholding a license, the defendant is not entitled to put in evidence fragmentary parts of an imperfect record of questions and answers.—*Elmore* v. *Overton*.—Filed Jsn. 7, 1886.—Ind.

SEARCH-WARRANT—MAY ISSUE ON AFFIDAVIT OF INFORMATION AND BELIEF—ACTION AGAINST AN OFFICER.—A police officer who makes application for a search-warrant on information and belief that a certain person has lottery tickets in his possession, for the purpose of selling them, is entitled to the issue of such warrant. If the officer in executing a warrant for the search of the

person, but not the premises, and while searching the person, find lottery tickets on the premises, he is authorized to take them into his possession, and having taken them and delivered them to the court, they are thencforth in the legal custody of the court and not of the officer.—*Collins* v. *Lean.*

SEPARATE ESTATE OF WIFE—LIEN OF HUSBAND FOR MONEY ADVANCED DURING HER LIFETIME.—Where a husband, during the lifetime of his wife, advanced money for improving his wife's separate estate, under a written agreement with her that it should be a lien on her estate, in a bill by the husband after her death to establish a lien on her estate, the prayer of the bill is denied.—*Fallon* v. *McAlonan.*—Filed 1885.—R. I.

SLANDER—VERDICT—SPECIAL FINDINGS INCONSISTANT WITH THE VERDICT.—Where a party used these words . "J. O'D. the old scoundrel, came down and stole my bull, and I can prove it; and if he don't come and settle up, I will put him through, and make him pay dear for taking him away." *Held* that these words import larceny and are actionable. The jury rendered a general verdict for damages in favor of plaintiff, and yet in a special finding they say that the words as spoken, in the light of all the circumstances, do not convey the meaning that the party meant or tntended to deprive him of his property. *Held* that judgment for defendant was properly rendered on the special finding, and the general verdict set aside.—*O'Donnell* v. *Hastings.*—Filed Feb. 3, 1886.—Minn.

STATUTE OF LIMITATIONS—PRESUMPTION ON APPEAL.—Where, on the trial, the defendant sets up the statute of limitations, and judgment is for plaintiff, it will, on appeal, be presumed that the judgment was sustained and justified by the evidence. Where it clearly appears by the complaint, that the statute has run, it may be taken advantage of by demurrer.—*Cameron* v. *San Francisco.*—Filed Jan. 27, 1886.—Cal.

STATUTE OF FRAUDS—LIABILITY FOR DEBT OF ANOTHER.—Where a physician was called to attend a sick woman, after one or two visits he refused to continue his services. The patient's son interposed, and told the physician to continue his visits and he (the son) would pay him. The physician did continue to attend the patient, and in an action against the son for his fees, the statute of frauds is set up in defense, on the ground that it was a promise to pay the debt of another, and therefore was not liable. *Held* that the promise was an original undertaking, and not within the statute of frauds.—*De Witt* v. *Root.*—Filed Jan. 6, 1886.—Neb.

STREET IMPROVEMENT—RIGHTS OF LOT OWNER.—Where the city authorities propose to open and extend a street, and damages, costs and benefits are assessed, and procedings had for the collection of the assessments, and subsequently fail to open the street as proposed, parties who have paid such assessments may recover the same, on the ground of failure of consideration. No difference whether the abandonment of the improvement occurred before or after the payment of the assessment.—*Valentine* v. *City of St. Paul.*—Filed Feb. 1, '86.—Minn.

SUBSCRIPTION CONTRACT——WORK NOT DONE IN THE TIME AGREED.—Where a number of persons subscribe, agreeing to contribute to a fund for a common purpose, the promise of others is a sufficient consideration on which the promise of each may be enforced, and where work and labor is the subject matter of a contract, which is to be performed in a given time, if the completion does not come within the time specified, the time is not so essentially of the essence of the contract, as to justify rescinding the same. The only remedy is by way of damages for the delay.—*Homan* v. *Steele.*—Filed Jan. 6, 1886.—Neb.

SUNDAY LAW—RIGHT TO RECOVER FOR INJURIES RECEIVED ON SUNDAY.—Any one engaged in any employment except that of

necessity and charity, is illegally employed on sunday. Where an employe of a railway company is injured while employed in running a freight train on sunday, it is *held* that the work was not one of necessity or charity and he could not recover damages for the injury received.—*Read* v. *Boston & O. Ry Co.*—Filed Oct. 24, 1885.—Mass.

SUSPENSION OF SENTENCE—PROCEEDINGS IN ERROR.—One convicted of murder in the first degree, in the court of common pleas, and sentenced to be hanged, took a writ of error to the circuit court of the same county. The case could not be heard in the circuit court until after the date fixed for execution of the sentence. Motion was made in the circuit court for suspension of sentence until the case could be heard, which motion was denied, on the ground of want of jurisdiction. An application to the supreme court for a suspension of sentence, is also denied, on the grounds that as the case is pending in the circuit court, this court has no jurisdiction. The motion is dismissed and it is declared that the circuit court has jurisdiction to entertain the motion.—*Webster* v. *State.*—Filed Dec. 15, 1885.—Ohio.

SWAMP LANDS—GRANTED TO THE STATE AND BY THE STATE TO A COUNTY—TITLE VESTED IN COUNTY.—In 1879 the legislature passed an act providing for the construction of a road in certain counties, and offering to convey certain lands in consideration of the construction of said road. During the same year certain counties accepted the offer made, and filed their undertaking accordingly, agreeing to construct the road. The road was constructed accordingly and patents granted by the state, for the lands in question, to the assignee of the counties which had undertaken the work. *Held* that the lands so listed were not subject to private entry.—*Chadbourne* v. *Ste Land Com'r.*—Filed Jan. 20, 1886.—Mich.

TAXES PAID UNDER VOID ASSESSMENT—SETTING ASIDE THE ASSESSMENS—RECOVERY OF TAXES PAID.—Where taxes are assessed by persons having no jurisdiction, and taxes paid under such assessment, they may be recovered in an action for that purpose, and it is not necessary that such action for recovery of the money so paid be preceded by a demand or by an action to set aside the void assessment. The money having been wrongfully taken from the tax payer, the defendant has no right to retain the same.—*Bnencher* v. *Port Chester.*—Filed Jan. 19, 1886.—N. Y.

TRANSCRIPT OF EVIDENCE—CERTIFICATE OF CLERK—FORMER ADJUDICATION.—Where it is sought to put in evidence the transcript of a record, if it has attached the certificate of the clerk that it is "a full, true and complete copy" of the proceedings had, etc., it is sufficiently verified by such certificate, under seal of the court. A final judgment of a court of competent jurisdiction is a final adjudication of all matters which the parties might have litigated in the case.—*Vail, Adm'r.* v. *Rinehart.*—Filed Jan. 19, 1886.—Ind.

TROVER AND CONVERSION—EVIDENCE—ATTACHMENT BOND.—Where one converted to his own use the goods of another, and an action in trover and conversion was brought, the defendant gave bond which was substituted for the goods. Subsequently a part of the goods were returned to plaintiff, and payment for the part not returned not being made, an action is brought on the bond, and judgment obtained for the balance and for damages. In the action on the bond the trial court admitted the report of the committee appointed to appraise the property not returned. *Held* that the admission of this evidence was error.—*Trubee* v. *Wheeler.*—Filed Jan. 16, 1886—Conn.

TRUST—LANDS PURCHASED WITH TRUST FUNDS AND CONVEYED TO THE TRUSTEE IN HIS OWN NAME—BILL TO COMPEL CONVEYANCE.—Where it is alleged that lands have been purchased and paid for with trust funds, and the land conveyed to the trustee in his

own name, in a bill to force the conveyance of the land to the rightful owner, the evidence must be clear and convincing, or the court will not decree a conveyance.—*St. P. Cath. Ch.* v. *Daly.*—Filed Jan. 25,'86.—Ills.

TRUST TO PAY DEBTS—IMPLIED POWER OF SALE.—Where property is conveyed in trust for the payment of the debts of the grantor, and for ultimate division, there is an implied power to sell the trust property, by the trustee.—*Cherry* v. *Greene.*—Filed Jan. 25, 1886.—Ills.

TRUSTEE—INVESTMENT FOR LIFE-TENANT IN SECURITIES AT A PREMIUM.—Where one holding a fund for the benefit of a life-tenant with remainder over, invests the funds in securities purchased at a premium, he cannot apply a part of the income annually to the increase of the fund, for the purpose of restoring the shrinkage by the premium paid.—*N. E. Trust Co.* v. *Eaton.*—Filed Jan'y 18, 1886.—ass.

TRUSTEE—LIABILITY FOR INTEREST ON TRUST FUND.—Where by the conditions of the trust, the trustee is required to keep the fund invested in a safe manner, the damages for a failure to do so, is the amount of interest which he might have obtained, by an investment as directed. *Andrew* v *Schmidt.*—Filed Dec. 23,'85.–Wis.

VENDOR AND VENDEE—NO WARRANTY OF QUANTITY.—In the conveyance of land where there is no warranty of qnantity, and the quantity falls short of what is called for, if the grantee executes a bond for the purchase money, he cannot defend against the bond on the ground of breach of faith or fraud, where there is no actual fraud shown. —*Rodgers* v. *Olshoffsky.*—Filed October 5. 1885.—Pennsylvania.

VENDOR AND VENDEE—SALE OF LAND ON DEFERRED PAYMENTS.—Where one has sold lands on deferred payments with a clause of forfeiture in the contract, if, upon default, the vendor treats the contract as still subsisting, he is held to have waived the right of forfeiture. After such a waiver, reasonable time and opportunity must be given for payment.—*Quinn* v. *Olson.*—Filed January 18, 1886.—Minnesota.

VENDOR AND VENDEE—ENTRY BY VENDOR WHEN NO TENDER OF PURCHASE MONEY.—Where a purchaser of land takes possession under an agreement to pay the purchase money at a given time, and failing to do so, subsequently leaves the premises, the vendor may enter upon the land peaceably, and the vendee cannot obtain possession, without showing tender of the purchase money. —*Bell* v. *Clark.*—Filed Jan. 4, '86.—Penn.

WATER AND CANAL COMPANIES—REPAIR OF BRIDGES—DUTY OF ROAD OVRSEER.—The statute requiring all persons who construct a canal or ditch across a public highway to bridge the same, applies to canal companies, and upon their failure to do so, the road overseer may construct the necessary bridge and collect of the company the cost of the same. The road overseer is not required to do so, unless the county commissioners supply the necessary funds for the same.—*Fresno Co.* v. *F. S. Canal Co.*—Filed Jan. 22, 1886.—Cal.

WITNESSES—INSTRUCTIONS—WEIGHT OF TESTIMONY.—Where the court instructs the jury that "if you believe any witness has sworn falsely as to any material fact, you must disbelieve such false statement, aud may disbelieve the whole of his or her testimony," is not error, The code provides that "a witness false in one part of his testimony is to be distrusted in others."—*Brown* v. *Griffith.*—Filed Jan.26,'86.—Cal.

WIFE'S SEPARATE PROPERTY—SOLD FOR HUSBAND'S DEBTS—PURCHASER TAKES NO TITLE—CHATTEL MORTGAGE, GOOD BETWEEN THE PARTIES BUT VOID AS TO OTHERS.—The separate property of wife not being liable for debts of the husband, where such

property is sold on an execution against the husband, the purchaser takes no title, and could not obtain possession as against one claiming under the wife. A chattel mortgage, although defective in the description of the property, may be good as between the mortgagor and mortgagee, yet as to third parties void.—*Leighton* v. *Stuart.*——Filed Jan. 6, 1886.—Neb.

WHARF PRIVILEGES—OWNERS OF LANDS ABUTTING ON THE WATER—DAMAGES FOR TRESPASS.—The owner of land bounded by a street on one side, and by a river on another, is entitled to wharf privileges in front of his land and into the middle of the street, subject to the easment, vested in the public, of the right of travel on the street. Where an owner on one side of the street constructed a pier across the whole of the street, and collected wharfage, the owner of the other side of the street bounded by the river, is entitled to recover damages to the amount of one-half the wharfage.—*Steers* v. *City of Brooklyn.*—Filed Dec. 22, '85.—N.Y.

WILL—ATTESTATION OF—UNDUE INFLUENCE.—The statute requires that the attesting witnesses to a will, must attach their signature in the presence of the testator. The act will be construed to be in the presence of the testator, if done where the testator could have seen the act of signing performed by looking in that direction. Such undue influence as will vitiate a will, must amount to force and coercion. Advice given by a disinterested party, and by which advice the terms of the will may be different from what they would have been in the absence of such advice, does not amount to undue influence.—*Bradford* v. *Vinton.*—Filed Jan. 20, 1886.—Mich.

WILL—CODICIL—CONSTRUCTION.—In a will where the testator divided his estate between three beneficiaries, he provided for an advancement to one of the three. It was also provided that the advancement should in no way impair the payments to be made to the other two. The executors under the will, are made defendants in a bill, praying that they be compelled to pay a judgment against the beneficiary entitled to the advancement and the others resist the action, on the ground that it would impair the portion due to them. *Held* defendants were entitled to an injunction. Equality is equity in such cases.—*Hutton's Ex'rs.* v. *Hutton.*—Filed Dec. 22, 1885.—N. J.

WILL—CONSTRUCTION—RULE IN SHELEY'S CASE.—A will containing the clause; "I also bequeath the balance of my estate, real and personal, to my three nieces (naming them) share and share alike, during their lives, and at their deaths to go to their heirs, in equal amounts, * * * * * * * and at the death of my neices it may be sold to make distribution to heirs." *Held* that the residuary legatees took a fee simple in the real estate and one third of the personal property.—*Cockin's Appeal.*—Filed Jan. 4,'86.—Pa

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WILL—LIFE ESTATE—TENANT.—A testator devises his farm to his widow with a provision that his son should have the refusal of renting the farm on certain conditions, when he arrived at the age of 21. This provision the widow cannot disregard. The son is entitled to the benefits of the provision in the will, and after his majority is entitled to the relation of tenant on the conditions named in the will—*Springer's Apperl.*—Filed Jan. 4, 1886.—Penn.

WITNESS—IMPEACHMENT OF—PRIVILEGE OF WITNESS.—On cross-examination a witness may be asked whether he has ever been convicted of a felony, with a view to impeaching his testimony. It is within the discretion of the court to permit a question as to whether witness had been arrested for a crime committed in connection with the defendant. Where a witness does not claim his privilege to refuse to answer questions which may expose him to prosecution, the court may in its discretion allow such questions to be put on cross-examination.—*State* v. *Bacon.*—Filed Jan. 11, '86.—Gre.

WORK AND LABOR—CONTRACT FOR—LABOR ON MATERIALS OWNED BY PARTY TO WHOM THEY ARE TO BE DELIVERD.—Where a party agreed to cut and deliver lumber, the timber being owned by the party for whom it was to be cut, and saw-mills were placed in position for doing the work, and some of the timber was cut and delivered, the owner declined to go on with the contract, and refused to receive the lumber. In an action for damages, the defendant sets up *inter allia*, the statute of frauds, which applies to the sale of goods and requires that there must be a contract in writing or a delivery of the goods. *Held* that this contract was for labor performed, or to be performed, and that the statute of frauds did not apply.—*Orman* v. *Hagar*.—Filed Jan. 20, 1886.—N. M.

(Where a coal-hole in the sidewalk was negligently left open by the tenant of the property and a party is injured thereby, no recovery of damages can be had of the owner of the premises. He is not liable unless the injury was caused by some fault of his)

Strong v. *Kamm*.
Filed Jan. 11, 1886.—Ore.

(An entry in books of account may be explained by testimony, but its direct import as an entry cannot be contradicted by the party making it.)

Mayor of Jersey City v. *N. Y. C. Ry Co.*
Filed Nov. 1885.—N. J.

(The grant by a city of the right to lay a railway track on a street takes away a valuable right from property owners, and will be strictly construed. When the laying of the track necessitates the change of grade, the abutting property owners may claim damages.)

Hodges Ex'rs v. *Amerman*.
Filed Oct. 1885.—N. J.

(Constructive notice of an unrecorded deed, may be inferred from open and exclusive possession.)

People v. *N. Y. Cath. Protectory*.
Filed Jan. 19, 1886.—N. Y.

(An order of a police justice in New York City, committing a child to a reformatory institution for begging on the streets, is not final or unconditional.)

People v. *Donovan*.
Filed Jan. 19, 1886.—N. Y.

(In a trial under the criminal code, if no exceptions be taken on the trial, the supreme court may upon consideration of the whole case, order a new trial if justice seems to demand it, but this power is vested only in the supreme court, and not in the court of appeals.)

Martin v. *Rector*.
Filed Jan. 19, 1886.—N. Y.

(In an action in ejectment, the question as to who is the actual occupant, left to the jury as a question of fact.)

Wolf v. *Kilpatrick*.
A. T. & S. F. Ry Co. v. *Walton*.
Filed Jan. 14, 1886.—N. M.

(The killing of an animal by a railroad train, raises no presumption of negligence of the company. The plaintiff must prove negligence.)

Ryan et al v. *Ray et al*.
Filed Jan. 19, 1886.—Ind.

(Where the trustees of savings banks have violated their statutory duties, the state auditor alone is authorized to prosecute an action against them.)

Martin v. *Victor M. & M. Co.*
Filed Jan. 1886.—Nev.

(An execution sale will not be set aside unless the judgment in the case be set aside, or materially modified.)

Williams v. *Thomas*.
Filed Jan. 15, 1886.—N. M.

(Affirming the well established rule that unless objection be made to the evidence in the trial court, they cannot be raised on appeal.)

In Re Estate of Moore.
Filed January 27, 1886.—California.

(An order of the probate court removing

an administrator, is one within the discretionary power of the court, and from such order no appeal will lie.)

Cal. Beet Sugar Co. v. *Porter.*
Filed Jan. 26, 1886.—Cal.

(Where an execution has been levied and property sold on a judgment fraudulently obtained, an action in equity will lie for the annullment of the judgment, and all proceedings under the same.)

People v. *Phillipps.*
Filed Jan. 22, 1886.—California.

(In a prosecution for passing counterfeit money, it is not error to charge that the victim of the fraud was damaged in being induced to make a journey, and suffered expense in doing so.)

Sinker v. *Floyd.*
Filed Dec. 19, 1885.—Indiana.

(Holding that an action for breach of covenant cannot be maintained by any other than the person who suffers injury by the breach.)

Strong, Ttustee v. *Makeever.*
Filed Nov. 17, 1885.—Indiana.

(Public use of a roadway for twenty years, amounts to a dedication of the land to the public.)

Nelon v. *Oregon Ry & Nav. Co.*
Filed Jan. 6, 1886.—Oregon.

(The question as to whether the amount of damages awarded by a jury is excessive or not, is a queston of fact, and the refusal of the trial court cannot be reviewed on appeal, where only questions of law are raised by the record.)

Johnson v. *Stephenson.*
Filed Dec. 31, 1885.—Indiana.

(An appeal to the supreme court must be perfected within one year from the date of judgment.)

State Ex. Ret. Neff. v. *Faurote.*
Filed Dec. 29, 1885.—Ind.

(An assignment of error "in overruling appellant's demurrer to the first, second, third, fourth, fifth, sixth and seventh paragraphs" of a pleading, is good, if good as to any one of the paragraphs.)

Millwood Coal & Coke Co. v. *Madison.*
Filed Oct. 9, 1885.—Penna.

(Charging the jury that a carrier for hire is bound to furnish "safe and sufficient means of transportation for its passengers," will be construed to mean "reasonably safe.")

Leonard v. *Hart.*
Filed Dec. 31, 1885.—N. J.

(On the question of establishing a right of way by adverse user for twenty years.)

Millikan v. *Ham.*
Filed Jan. 6, 1886.—Ind.

(The purchaser at tax sale, may subsequently pay city taxes on the property, and have a lien for the same on the property.)

Culbertson v. *Munson.*
Filed Jauuary 6, 1886.—Indiana.

(An action to quiet title as against a tax deed. Holder of tax title entitled to interest, twenty per cent.)

Schotz v. *Kirker.*
Filed Jan. 4, 1886.—Penna.

(Holding that, in an action to set aside a conveyance on the ground of fraud, inadequacy of price is not of itself sufficient to establish fraud.)

Commonwealth v. *Lykens Water Co.*
Filed October 5, 1885.—Pa.

(Relating to the forfeiture of a charter for non-user, under the act of 1876.)

Grube v. *City of St. Paul.*
Filed Jan. 11, 1886.—Minnesota.

(A city is not liable for the negligent act of members of its fire departmeut.)

Appeal of Ebensburg School-District.
Filed Nov. 2, 1885.—Penn.

(Holding that in electing school directors

in a borough where there is no special statute to change the method under the general law, the latter applies in full force.)

Crosby v. *St. Paul City R'y Co.*
Filed January 12, 1886.—Minnesota.
(Holding that the granting of a new trial, on the gronnd that the evidence did not sustain the verdict, was in the discretion of the trial court, and should not be disturbed by the appellate court.)

Sprague v. *Abbott Jr.*
Filed Jan. 10, 1886.—Vermont.
(A tax must be assessed on the last grand list completed, unless there be other directions by a statute.)

Pearce v. *Wilson.*
Filed Jan. 4, 1886.—Penn.
(Holding that a conveyance made in consideration of the abandonment of a prosecution for embezzlement, is void, as being against public policy.)

Rowand v. *County of Allegheny.*
Filed January 4, 1886.—Pennsylvania.
(Relating to the power of the comptroller of the county to audit the accounts of the clerk of the courts.)

Perkins v. *Morse.*
Filed Dec. 16, 1885.—Maine.
(Holding that a married woman may lease,in her own name, land paid for by her husband but held by her in her own name.)

Young v. *Filley.*
Filed January 6, 1886.—Nebraska.
(Holding that in an action for breach of warranty as to the quality of goods sold, the measure of damages is the difference between the actnal value of the goods and what the value would have been had they been as warranted.)

S. B. Society v. *Eggan.*
Filed January 13, 1886.—Michigan.
(Holding that where it was the dutv of the treasurer of a society to deposit the society funds in a bank, and they were deposited with the approval of the society, upon failure of the bank the treasurer is not liable.)

C. St. L. & P. Ry Co. v. *Bills.*
Filed Nov. 23, 1885.—Ind.
(It is the duty of a passenger, before entering a car, to ascertain whether the train stops a the point of his destination, and i he fails to do so, the conductor may eject him from the train; but in doing so he must use no more force than is necessary.)

State v. *Douglass Co.*
Filed Jan'y 6, 1886.—Nebraska.
(In an application for mandamus requiring the county commissioners to call an election for justices of the peace, in Omaha, which involved the constitutionality of a statute, the writ is denied.)

People v. *Russell.*
Filed January 20, 1886.—Michigan.
(On the question of nuisance in maintaining a slaughter house in the city of Detroit. See act 1879 and 1881.

Adams v. *Johnson.*
Filed Jan. 6, 1886.—Nebraska.
(An appellant from a justice's court, is estopped in an action on the appeal bond, from denying that the appeal had been taken.

Mudge v. *Jones et al.*
Filed January 20, 1886.—Mich.
(Holding that females cannot vote in an election for sceool officers, in the absence of legislation to that effect.)

Neubaner v. *N. Y. L. E. & W. Ry Co.*
Filed Dec. 15, 1885.—N.Y.
(Affirming the well established rule that a master, himself in no way in fault, is not liable for injury to a servant caused by negligence of a co-servant.)

Uppfalt v. *Nelson.*
Filed Jan. 6, 1886.—Neb.

(In an action of ejectment, where the answer of defendant puts in issue the plaintiff's title, but fails to set up an equitable defense, judgment should be for plaintiff, although there may be some evidence showing an equitable defense.)

W. N. Gas Co. v. *Wilkinson.*
Filed Nov. 9, 1885.—Penn.

(A joiut stock company which digs a trench across a highway, is liable for injuries caused by the trench, to one travelling on the highway, unless there was contributory negligence.)

Abbott v. *Abbott.*
Filed Jan. 6, 1886.—Neb.

(Where a promise is based upon a false statement which is developed in the future, the injured parties are entitled to the same relief as if the false representations pertained to a fact in the present.)

State Ex. Rel. Kinzer v. *Cain.*
Filed Jan. 6, 1886.—Neb.

(A county treasurer cannot seize and sell personal property for taxes on real estate.)

State Ex. Rel. Kinzer v. *Cain.*
Filed Jan. 6, 1886,—Neb.

(County commissioners may purchase lands sold for taxes, in the absence of other bidders.)

Poillon v. *City of Brooklyn.*
Filed Jan. 19, 1886.—N. Y.

(A city having express authority by statue to maintain public baths, may do so, but where it occupies private property without permission of the owner, it must pay rent therefor.)

Kirtland v. *Moore.*
Filed Sept. 8, 1885.—N. J.

(In deciding questions raised on a bill of interpleader, the court has a wide discretion, in either disposing finally of the questions raised, or directiug that an issue be raised.)

Huyler v. *Cragin Cattle Co.*
Filed Dec. 21, 1886.—N. J.

(Corporate stockholders have a right to inspect the books of the company at all proper times, to ascertain whether the management of the company is to their satisfaction or not.)

Jones, Adm'r v. *Orton, Adm'r.*
Filed Dec. 23, 1885.—Wis.

[Books of original entry, propeily verified, presumptive evidence of delivery of goods charged therein,]

Noble v. *Fairs.*
Filed Jan. 6, 1886.—Mich.

[An action in ejectment having been sucessfully prosecuted to judgment does not bar subsequent action for mesne profits.]

From the *Railway News* we take the following item as touching the rights and obligations of employer and employe:

"It has long been a settled principle of the law of negligence in the United States, and so also, until recent legislation, in England, that a servant assnmes to a great extent the risks of personal injury incidental to his master's service. These risks may be said generally to arise from the use of defective implements, or from the negligence of felfow servants. But in the latter case the injuring and the injured servant must be engaged in the same common employment; that is, working as co-employes to the same common end. The master is bound to use "reasonable care and proper diligence" in the selection of workmen, and in providing safe machinery and suitable tools. After having fulfilled his duty in these respects, he does not warrant to his employes immunity from either danger, and is not responsible for injuries sustained by them. Therefore it is, that a servant suffering fiom negligence is much more limited in his right of action against his master than would be the case where the relation of employer and employe does not exist. But if the instrumentality of the injury be the carelessness of another servant, it is not sufficient that they both be engaged in the same general employment, they must be acting in the service of the same master. Hence, before an act passed

by the Legislature of Pennsylvania in 1868, (Pamphlet Laws, p. 58,) it was held, in *Catawissa Ry Co.* v. *Armstrong* (13 Wright, 186,) that when a person in the service of one railroad company was injured by the cars of another company, which had the right to run its trains over the road of the first, the person so injured was not precluded from recovering on the ground that he was in the same general employment with the servant of the company whose negligence caused the injury; because the other essential was wanting—they had different masters. Three years after this decision, and "doubtless in view of it," (as was said by Mr. Justice Paxson, in *Mulherin* v. *D.L.&W.Ry Co.* 31 Smith 366,) was passed the act of Apr. 4, 1868, (Purd. Dig. 1094, pl. 5, P. L. 58.) the first and material section of which is as follows:

"When any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the roads, works, depots and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employe, the right of action and recovery in all such cases against the company, shall be such only as would exist if such person were an employe: *Provided*, That this section shall not apply to passengers.'" The following cases in which this act is construed will be found of interest on this point: *Mulherrin* v *D.L.&W.Ry Co.* 31 Smith 366; *Ricard* v. *N. Penn. Ry Co.* 8 Norris 193; *Cummings* v. *P.C.&St.L.Ry.* 92 Pa. St. 82; *Penn. Railway.* v. *Price.* 96 Pa. St. 256.

NEW PUBLICATIONS.

A TREATISE on the principles of the law relating to the DISCHARGE OF CONTRACTS, by Robert Kalston Esq., of the Philadelphia Bar.—PHILADELPHIA, T. & J. W. JOHNSON & Co

This little book has been placed on our table, fresh from the press of this well known Philadelphia publishing house. It is a brief synopsis of the various ways in which a contract may be discharged, and the subject is treated under six heads or chapters as follows: Discharge by agreement, by provisions incorporated in the contract, by performance, by impossibility of performance, by breach of its terms, and by operation of law. The book consists of nearly 100 pages, and contains much useful matter.

TRIAL OF TITLE TO LAND, a treatise on the principles and practice in the trial of title to land; including Ejectment, Trespass, Writs of Entry, Statutory Remedies, Color of Title, Title by Possession and Adverse Possession, by A. G. Sedgwick and F. S. Wait.—Second Edition.—NEW YORK, BAKER VOORHIS & Co.

This work, originally published in 1882, is now greatly enlarged by the addition of four new chapters on *Plaintiff's Title and Evidence; Defenses; Boundaries; and Ejectment in Federal Courts;* and many portions of the first edition have been rewritten, revised and enlarged. The first edition was at once recognized as one of the most valuable of books recently published. The former edition is now enlarged by an increase of fifty per cent of new matter and citations, and covers seemingly all conceivable points arising in questions of title to land. About seven thousand cases are cited in both federal and state courts, covering every question decided or likely to be raised on the subject, or which can enter in as a factor in determining the rights of parties in such actions. The chapter under the head of *Defenses*, added in this edition, enumerates the following as among the defenses which may be set up, and defines clearly when and under what circumstances certain defenses are available, —Outstanding title—Possession acquired by fraud—Defective condemnation—License to use land by railroad—Possession under judicial sale—Tax title—Advancement—Effect of will after probate—Equitable defense—Injunction against ejectment—Defective title—Estoppel—Fraud in estoppel —Statute of frauds—Equitable estoppel available at law—After acquired title—Estoppel by illegal contract and Pleading estoppel. Altogether, it is a comprehensive treatise, in the preparation of which great labor and research has been carefully and wisely expended, It will be found a very valuable addition to any law library, and one which no lawyer, interested in real estate litigation can afford to be without. It is equally useful in every state.

READ THE FOLLOWING EXPRESSIONS OF APPROVAL.

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The Chicago Law Journal.

CHICAGO, APRIL, 1886.

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ACTION FOR PRICE OF GOODS SOLD—WRITTEN CONTRACT.—Where goods are sold on a written contract and some of the goods delivered, upon the failure of the seller to comply with all the conditions of the contract, the purchaser may declare the contract off, but the seller may recover for the price of the goods already delivered, less any damages which the purchaser may recover for the nonfulfilment of the contract.——*Gage* v. *Myers.*—Filed Jan. 20, 1886.—Mich.

ACTION TO RECOVER ON ACCOUNT—AFFIDAVIT OF CLAIM—SERVICE OF SUMMONS.—In an action to recover on an open account, an affidavit of the amount of the claim or debt should be served on defendant with the summons. Where the return on the summons does not show that such affidavit was served upon the defendant, such affidavit is not *prima facie* evadence of the facts stated therein.—*Gordon* v. *Sibley.*—Filed Jan. 20, 1886.—Mich.

ADMINISTRATOR—TIME IN WHICH TO SELL REAL PROPERTY—PRESUMPTIONS OF REGULARITY OF PROCEEDINGS.—The time in which real estate may be sold by an administrator, may be extended to three years, and when one administrator has been discharged and another appointed, a like extension of time may be given the new administrator. When an order of sale has been granted, and the sale made in accordance therewith, it is the duty of the court to confirm the same and order a conveyance executed, if the sale has been for a fair and equitable price.—*Saxon* v. *Cain, Adm'r.*—Filed Jan. 9, 1886.—Neb.

AFFIDAVIT OF DEFENSE—PLEA IN ABATEMENT.—Where facts are set up in an affidavit of defense which if pleaded in abatement would be good, judgment will not be entered until the appropriate plea can be entered. A question as to the sufficiency of service to give the court jurisdiction, may be pleaded in abatement.—*National Bank* v. *American Ship-Building Co.*—Filed Jan. 25, '86.—Penn.

AGENCY—RATIFICATION BY FIRM OF ACT OF ONE OF ITS MEMBERS.—Where one member of a firm settles a claim by compromise, without the knowledge of the other partners, and receives in settlement a note and some cash, the use of the cash and acceptance of the note works a ratification of the settlement.——*Levick's Appeal.*—Filed Jan. 25, 1886.—Penn.

ANIMALS——PROCEEDINGS CONCERNING WILD ANIMALS—AUTHORITY OF A JUSTICE OF THE PEACE.—In proceedings under the laws of 1881 concerning wild or diseased cattle, had before a justice of the peace, such proceedings are not conclusive as against the owner. In an action of replevin, the owner may show that the cattle were

not wild or diseased within the meaning of the statute. The justice of the peace in such matter, has no jurisdiction outside of his township.—*Wilcox* v. *Johnson.*—Filed Feb. 4, 1886.—Kans.

AMENDMENT OF COMPLAINT—INCREASING THE AMOUNT OF CLAIM.—Where the trial court allows an amendment of the complaint, by increasing the amount of the claim from an amount below $500 to a sum greater than $500, although the direct purpose of the plaintiff may have been to bring the case within the jurisdiction of the U. S. court, yet if the judge granted leave to so amend the complaint in good faith it will be held to have been within his sound discretion.—*Austin* v. *N. P. F. F. & B. H. Ry Co.*—Filed Feb. 3, 1886.—Minn.

APPEAL—INSTRUCTION—FALSE REPRESENTATIONS.—In an action wbere instructions are erroneously given, and prejudice, if any, would be against the defendant, nevertheless judgment is rendered in favor of the defendant. In such case, where an appeal is taken by plaintiff, he cannot base his exceptions on such instructions from which he suffered no prejudice. In an action for false representations, which are denied, but proven to have been made, it is proper to instruct the jury that if they find that the false statements were actually made, the plaintiff is entitled to recover.—*Huduett* v. *Gardner*—Filed Jan. 27, 1886.—Mich.

APPEAL— ADMINISTRATOR—CONVICTION OF FELONY.—Where an administrator has been convicted of a felony, he does not as such administrator become *civiliter mortuus*, and in an appeal taken in a case against him as administrator, notice of the appeal may be served on him or his attorney.—*Brown* v. *Mann.*—Filed Feb. 8, 1886.—Cal.

APPEAL—CERTIFIED QUESTIONS OF LAW—WHEN A RAILWAY COMPANY IS BOUND TO FENCE A STATION.—When a question of law is certified by the appellate court to the supreme court for decision, the whole case is before the supreme court, and the parties are entitled to have any question determined which is presented by the record. Whether a railway is bound nnder certain circumstances to maintain a fence around a station or not, is a question of fact; but if it does maintain a fence it is bound to keep it in good redair.—*C. & E. I. Ry Co.* v. *Guertin.*—Filed Jan. 25, 1886.—Ills.

APPEAL—DEFENDANT CALLED AS WITNESS BY PLAINTIFF—CONTRACT BY MARRIED WOMAN.—In a trial before a justice of the peace, the calling of the defendant as a witness by plaintiff, will not bar the right of appeal. A married woman has the right to control or sell any property which she may own at the time of her marriage, or which may come to her subsequently by descent, the same as a married man may dispose of his property.—*Broadwater* v. *Jacoby.*—Filed Feb. 10, 1886.—Neb.

APPEAL—CONFLICT OF EVIDENCE—DAMAGES FOR MALICIOUS PROSECUTION.—Where there is conflicting evidence, the verdict of a jury will not be disturbed on appeal, on the ground that the verdict was not sustained by the evidence. It is *held* that $750 damages for malicious prosecution, is not excessive.—*Street* v. *Hoffman.*—Filed Jan. 26, 1886.—Cal.

ASSAULT AND BATTERY—VENUE—PRIVILEGE WHILE ATTENDING LEGAL PROCEEDINGS.—A civil action for assault and battery, may be commenced in any county where the defendant can be summoned. A party voluntarily attending proceedings before the United States land officer, is not privileged from service of legal process.—*McAnarney* v. *Caughenant.*—Filed Feb. 4, 1886.—Kan.

ASSIGNEE—REMOVAL OF—APPFAL FROM ORDER FOR.—The statute provides that a judge of the circuit court may require an assignee to give additional security, or remove him if it be shown that he is guilty of

wasting or misapplying the trust estate. In an application for the removal of an assignee where the court in its discretton denies the application for removal, but requires him to give additional security, such order is not appealable.—*In Re Goldsmith.*—Filed Oct. 1885.—Oregon.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS—SUBSEQUENT ATTACHMENT—BURDEN OF PROOF.—When an assignment for the benefit of creditors has been made, and the goods subsequently attached at the suit of a creditor, and the assignee interpleads, the burden of proof is on the assignee to show his right of possession. The fact that the assignee is the legal adviser of the assignor, and that the attorney's fees for conducting the business is the first object of trust specified therein, does not *per se* show palpable fraud.—*Burr* v. *Clement.*—Filed Jan. 11, 1886.—Colo.

ASSIGNMENT FOR BENEFIT OF CREDITORS—FRAUDULENT CONVEYANCE.—The right to attack a conveyance on the ground of fraud, where a general assignment has been made, is in the assignee and not the creditors. Preference may be given for a just debt, but not in the instrument of general assignment. The preferred creditor must take by a separate assignment, executed prior to the general assignment—*Root, et al* v. *Potter, et al.*—Filed Feb. 3, 1886.—Mich.

ATTORNEY AT LAW—AUTHORITY TO APPEAR—APPEAL FROM A JUSTICE'S COURT.—An attorney at law cannot be required, upon demand of opposite party, to produce written authority to appear for a client. An attorney in good standing will be presumed to have such authority, until the opposite is shown. An action to recover for personal labor, against a corporation, must be brought in the county where its works or principal office is located, but if brought in another county and the corporation appear and defend, the action may be maintained. If the corporation does not choose to submit to the jurisdiction, the action will abate.—*Norberg* v. *Heinman.*—Filed Jan. 20, 1886.—Mich.

ATTORNEY AT LAW—AUTHORITY TO COMPROMISE A CLAIM—An attorney at law has no authority, by virtue of his retainer, to compromise a claim which he is employed to collect, and accept a less sum than the amount of the claim in satisfaction thereof.—*Kelley* v. *Wright.*—Filed Feb. 2, 1886.—Wis.

BANKRUPTCY—DISCHARGE OBTAINED AFTER VERDICT AND BEFORE JUDGMENT.—A discharge in bankruptcy, obtained after verdict and before judgment, and filed with a motion for a stay of proceedings, is effectual. It is no bar to the action or to the rendition of a judgment, but it entitles the defendant to a perpetual stay of proceedings.—*Hill* v. *Harding.*—Filed Jan. 25, 1886.—Ills.

BASTARDY—RIGHT TO EXAMINATION OF THE PROSECUTING WITNESS—INSTRUCTIONS.—The defendant in bastardy proceedings has a right to demand that the relatrix be present, and that her examinatiou shall be reduced to writing; but if he goes to trial without making such demand, he will be held to have waived that right. It is error for the court to instruct the jury as to the credibility of a witness.—*Unrucht* v. *State.*—Filed Jan. 26, 1886.—Ind.

BETTING—MONEY PAID OVER BY STAKEHOLDER AGAINST THE PROTEST OF A DEPOSITOR.—All promises to pav money bet on any game of chance, are illegal and void. Where money was deposited with a party, on a wager, to be paid to the winning party, and before it was paid one of the depositors notified the stakeholder not to pay over his money, the holder was bound to take notice of the same and not pay the money.—*McGrath* v. *Kennedy*—Filed Jan. 2, 1886.—R.I.

BENEFICIAL ASSOCIATION—BENEFITS PAID BY ASSESSMENTS ON MEMBERS—BY-LAWS.—In a mutual benefit association, where the by-laws provide that an assessment of one dollar shall be paid for the benefit of

the family of a deceased member, his nominee shall be entitled to such amount only as paid in, and not an amount equal to one dollar for each member, unless all have paid the assessment made for the purpose. A corporation can only act through the medium prescribed by law. A resolution passed by the membership of such corporation, unless ratified by the board of directors is inoperative.—*In Re La Solidarite M. B. Ass'n.* —Filed Jan. 27, 1886.—Cal.

BILL OF EXCEPTIONS—DELAY IN TENDERING IT—ABSENCE OF POWER OF THE COURT TO SIGN—Where a bill of exceptions is presented within the time allowed, but by pressure of business the court fails to sign it, he may sign it after the limitation has expired; but if the bill has not been tendered within the time, the judge is *functus officio* and cannot sign it.—*Morgan* v. *Thompson.* —Filed Jan. 20, 1886.—Ore.

BILL OF DISCOVERY—DEMURRER—PRODUCTION OF BOOKS.—In an action against a firm, an affidavit of defense was filed, denying a general partnership. Plaintiff filed a bill of discovery to compel the production of books, to which a demurrer was interposed and sustained, on the ground that plaintiff had an adequate remedy at law, by subpœna.—*Milne's Appeal.*—Filed Jan. 25, 1886.—Pa.

BOARD OF SUPERVISORS—AESESSMENT TO COVER COSTS OF AN APPEAL—ON WHOM COSTS REST.—Where an appeal had been taken by the city of Kingston, to the state assessors, from the equalization of values, which appeal failed, and the board of supervisors audited a bill of costs against the city for the appeal, and a writ of *mandamus* issued to comper a levy of the tax to pay the same. *Held* that the *mandamus* was properly granted. Where an appeal is taken in such case, if the appeal fails, the costs rest on appellant, if it succeeds, the costs must be paid by county exclusive of the appellant.—*People of Ulster Co.* v. *City of Kingston.*—Filed Jan. 10, 1886.—N.Y.

BURGLARY—SECOND ACTION FOR SAME OFFENSE—PROCEEDINGS QUASHED OR SET ASIDE—STATUTE OF LIMITATIONS.—Where proceedings have been commenced and are finally quashed, reversed or set aside, and another action is commenced for the same crime, the time during which the former proceedings were pending, is not counted in the rnnning of the statute which limits the time of commencing such prosecution to three years.—*Swalley* v. *People.*—Filed Jan. 22, 1886.—Ills.

CARRIER OF PASSENGERS——NEGLIGENCE —SPECIAL VERDICT.—Where a passenger signaled the driver of a street car to stop, and he slowed up until the passenger boarded the car, but started up too quickly and with a sudden jerk, by which the passenger was injured, it is held that he is entitled to damages. It is the province of the jury to find the facts, and not to draw therefrom conclusions of law.—*Connor* v. *Citizens St. Ry Co*·—Filed Jan. 26,'86.—Ind.

CARRIER OF PASSENGERS—CONNECTING ROADS.—A railroad company is not liable for a mistake of a passenger who is under the apprehension that he has paid his fare to a certain point, when in fact he has not. A passenger boarding a train and paying his fare to the conductor, supposing that he has paid through to his destination, when in fact he has only paid to a junction where he changes to another train run by another road, if he refuses to pay after changing cars, and is ejected from the train therefor, he has no right of action for damages.—*F.&P. M. Ry Co.*—Filed Jan. 27,'86.—Mich.

CHATTEL MORTGAGE—ON CROPS NOT PLANTED AT THE DATE OF MORTGAGE.—Where one executed a chattel mortgage on growing crops, and also on "75 acres of corn to be planted," and subsequently to the planting a judgment creditor of the mortgagor, caused an execution to issue and levied on the growing corn. *Held* that the mortgage was void as to the crop of corn,

as it was not in existence or planted when the mortgage was executed. The mortgage was a mere license, by which the mortgagee might have seized the crop under certain conditions.—*Cole* v. *Kerr*.—Filed Jan. 18, 1886.—Neb.

CHATTEL MORTGAGE—ATTACHMENT OF MORTGAGED PROPERTY—GARNISHMENT.—When the mortgagee has lawfully taken possession of the mortgaged property, a judgment creditor of the mortgagor cannot attach the property. The mortgagee holds the property as trustee, first to satisfy his own lien, and then for others as their interest may appear. The creditor's remedy is not by attachment but by garnishment.—*Blue Valley Bank* v. *Clement*.—Filed Jan. 19, 1886.—Neb.

CHATTEL MORTGAGE—CONTINUING SECURITY——FRAUDULENT CONVEYANCE.—Where the conditions of a chattel mortgage refer to the conditions of a bond, and the conditions of the bond are "to pay all the advances which may be made under the agreement, at the times, in the manner, and with the interest agreed upon," the mortgage is valid, and will be held to be a continuing security according to the conditions of the bond. Where the validity of a chattel mortgage is questioned, on the ground that it was made in fraud of creditors, the burden of proof is on the party attacking it.—*Shores* v. *Doherty*.—Filed Feb. 2, 1886.—Wis.

CHATTEL MORTGAGE—ATTACHMENT OF GOODS IN POSSESSION OF MORTGAGEE.—Where property under chattel mortgage is in the possession of the morgagee, they may be levied upon by a judgment creditor, and the interest of the mortgagor may be sold on execution, but the goods cannot be taken from the mortgagee without an offer to pay the mortgage debt. An offiicer having in charge the writ of execution may advertise the goods for sale, and on day of sale may compel the mortgagee to expose the goods for inspection of bidders, and they may be sold subject to the lien of the mortgage.—*Fox* v. *Cronan*.—Filed Jan. 25, 1886.—N J

COMPLAINT—MISTAKE IN THE NUMBER OF THE SECTION ON WHICH THE ACTION IS BASED.—In an action for damages for encroachment on a street, where by the complaint the action is based on section 1330, when it should have been 1331, but the complaint otherwise indicates the section under which the action was brought, clearly indicating that the number of the section in the complaint was a mistake, the complaint is held sufficient.—*State* v. *Schwin*.—Filed Feb. 2, 1886.—Wis.

CONTRACT—REFUSAL TO PERFORM—TENDER—PERFORMANCE ON SUNDAY.—Where one agreed to sell and deliver cattle at a specified price per pound, and on the day for delivery the seller refuses to perform his part of the contract, in an action by the purchaser for damages, it is not necessary that he prove a tender of the purchase money. When the day for the performance of a contract falls on a sunday by the terms of the instrument, sunday will not be counted, and the following monday will be considered the day of performance.—*Post* v. *Garrow*.—Filed Jan. 19, 1886.—Neb.

CONTRACT—— CUTTING OF LUMBER—— CHARGING GOODS TO A THIRD PARTY.—Where a party agrees to cut lumber, and that it is "to be manufactured in a good and workman-like manner," and in the work he uses a portable saw-mill, he cannot, in defense of the allegation that the work was not well done. allege that portable mills are not expected to do so good work as others, and justify on such grounds. A third party being notified that goods purchased by another will be charged to him, and he makes no reply, his silence cannot be construed as his assent to hold him liable for goods so charged.—*Grice* v. *Noble*.—Filed Feb. 3, 1886.—Mich.

CONTRACT—SERVITUDE — CONSTRUCTING A FENCE FOR ADVERTISING PURPOSES—RIGHTS ACQUIRED THEREBY.—Where a party agreed to build a fence around certain

lands, in consideration of being permitted to use the surface of said fence for advertising purposes, he thereby acquires the right to use the inside of the fence, and the right of entry upon the land for such uses. Such a right of entry and access is a servitude upon the land, and invests the grantee with more than a license. One purchasing land subject to such personal servitude, takes it subject to the same.—*Willoughby, et al*, v. *Lawrence, et al.*—Filed Jan. 25, 1886.—Ills.

COPARTNERSHIP SUED AS A CORPORATION—AMENDMENT.—Where a copartnership was sued as a corporation, and service had on one of the partners, and defendants appeared and entered a plea of *nul tiel*, the court allowed an amendment of the writ, setting up the partnership instead of the corporation. *Held* that such amendment was erroneous.—*Sawoer N. Y. St. Clothing Co.*—Filed Feb. 12, 1886.—Vt.

CORPORATIONS—LEASE FROM ONE CORPORATION TO ANOTHER—CONSENT OF STOCKHOLDERS.—Where one corporation desires to lease its property and franchises to another corporation, the consent of all the stockholders is necessary as a condition precedent to its right to lease.—*Mills Ex'rs* v. *C. Ry Co. of N. J.*—Filed Feb. 6,'86.—N. J.

CORPORATION—SECURITY FOR LOANS—POWER OF OFFICERS TO ISSUE BONDS.—Where a corporation executed a mortgage on its property to a trustee, to be held as security for the payment of corporate bonds to be issued to the amount of $12000 as security for money borrowed, and the corporation did so issue $6000 in bonds, which were used in accordance with the trust, and the corporation also made its note, which was endorsed by sundry parties, and used for a temporary loan. To secure the endorsers on the note, the corporation issued the remainder of its stock, not heretofore issued, and delivered it to said endorsers to secure them against loss. *Held* that the $6000 in bonds first issued being secured by the mortgage or trust deed, must be paid in full before the said endorsers can claim or obtain the payment of the bonds which they held as collateral.—*Woodin* v. *Sparta Furniture Co.*—Filed Jan. 15, 1886.—Mich.

COVERED RAILWAY BRIDGE—DUTY OF COMPANY TO MAKE A CERTAIN HEIGHT—INSTRUCTION.—Where a bridge is constucted across a railway track, it is incumbent on the company to raise it so high that a brakeman standing on top of a freight car can pass under it safely. An instruction to that effect is not erroneous. It is not error to instruct the jury that a brakeman is not bound to know all of the defects of construction, and be on the lookout for such dangers.—*C. & A. Ry Co.* v. *Johnson.*—Filed Jan. 22, 1886.—Ills.

CREDITOR'S BILL—WHEN MAINTAINABLE.—A creditor's bill cannot be maintained untill ordinary legal remedies are exhausted, and an executon returned "no property found." Where a debtor has tendered property which is encumbered, it must be reduced to money and if any balance remains nnpaid, the creditor may then maintain a creditor's bill.—*Preston et al* v. *Colby.*—Filed Jan. 25, 1886.—Ills.

CRIMINAL LAW—OBJECTIONABLE COMMENTS OF COUNSEL IN ARGUMENT.—Counsel have no right in argument to comment upon the fact that defendant refrained from testifying in his own behalf. If such comments be made and objected to, and the court sustains the objection and warns the jury that defendant's silence may not be weighed against him, there is no prejudice such as to lay the foundation for a new trial.—Filed Jan. 8, 1886.—Colo.

CRIMINAL LAW—WAIVER OF IRREAULARITY—SELF-DEFENSE.—If an adjourned term of court be irregularly held, and a defendant appears and goes to trial at such irregular term, without objection, he will be held to

have waived the irregularity. One may lawfully defend his brother, if he is in peril of his life. If one has been in fault in bringing on a fatal rencounter, before he is justified in killing his antagonist in self-defense, he must make an effort to retreat and avoid the danger.—*Snurr* v. *State.*—Filed Jan. 26, 1886.—Ind.

CRIMINAL LAW—MOTION IN ARREST OF JUDGMENT—BAWDY HOUSES—EVIDENCE.—Where an indictment substantially charges a crime, although not as precise and certain as it should be, it is not error to overrule a motion in arrest of judgment, because of the insufficiency of the indictment. In a prosecution for keeping a house of ill-fame, the general reputation of the house and the chastity of its inmates may be shown, but not the reputation of the defendant.—*Græter* v. *State.*—Filed Jan. 29, 1886.—

CRIMINAL LAW—MOTION TO SET ASIDE AN INFORMATION—QUESTION OF WHERE THE CRIME WAS COMMITTED.—Where an information is filed against a party for manslaughter, and a motion made to set it aside, on the ground that the crime was not committed within the limits of the county in which the information is filed, the superior court has no right to determine the question as to whether the crime was committed in the county or not, if the examination and commitment by the magistrate is regular.—*People* v. *More.*—Filed Jan. 29, 1886.—Cal.

CRIMINAL LAW—EFFECT OF DEFENDANT'S OWN TESTIMONY.—When the actions of a defendant are inconsistent with what he declares to be his intent, it cannot be laid down as a general rule, that the jury should draw their conclusions from his actions alone. He is entitled to have a fair consideration of his testimony in connection with his actions and all surrounding circumstances.—*State* v. *Maynard.*—Filed Feb. 8, 1886.—Nev.

DEED CONSTRUED AS A MORTGAGE—WHEN.—When the execution of a deed is accompanied by a collateral agreement that the grantee shall realize out of the property, and pay the surplus over a certain amount to the grantor, such agreement will be enforced as a special trust, but the deed will be held to be absolute. Where the facts show that no liability is attached to the grantor after the execution of the deed, it will be held to be absolute, and not a mortgage.—*Freer* v. *Lake.*—Filed Jan. 25, 1886.—Ills.

DEED—EFFECT OF DELIVERY—RETURN OF THE DEED TO THE GRANTOR TO BE HELD SUBJECT TO A CONDITION PRECEDENT.—When a deed conveying land is executed and delivered to the grantee, the effect is to vest the title in the grantee. If the deed be surrendered to the grantor, to be held until a condition precedent be performed, the title remains in the grantee from the date of the delivery of the deed to him.—*Bunz* v. *Cornelius.*—Filed Jan. 20, 1886.—Neb.

DEED CONSTRUED AS A MORTGAGE—EVIDENCE MUST BE CLEAR AND POSITIVE.—A deed absolute on its face may be shown by parol testimony to have been intended as a mortgage and if the proof is clear and convincing, it will be so construed. A fund set apart in a will for the support of a minor, is primarily payable to his guardian.—*Bailey* v. *Bailey Jr.*—Filed 1/22, 1886.—Ills.

DEFAULT IN PAYMENT OF A NOTE—PAYABLE AT A BANK—FAILURE OF THE HOLDER OF THE NOTE TO PRESENT FOR PAYMENT.—When a promissory note is made payable at a certain bank, if the maker deposits the money for the payment, or provides for the payment of the note when presented at the bank at maturity, and the holder fails to present the note at the bank for payment when payable, the maker is not in default for nonpayment until it is so presented.—*Ballard* v. *Cheney.*—Filed Jan. 19, 1886.—Neb.

DEMURRER—RES ADJUDICATA—AMENDED DECLARATION.—Where a general demurrer has been interposed to a declaration and

sustained, it does not bar a second action for the same cause in the lower court.—*Rodman* v. *Michigan Central Railway Co.*—Filed Jan. 27, 1886.—Mich.

DESCENT—GUARDIAN'S DEED—CO-TENANTS—PARTITION.—A deed purporting to be a guardian's deed, but made without the order of court, is void, but it may give color of title. In a suit for partition, it is within the power of the court to award to some of the co-tenants a money consideration in lieu of a portion of the land. Tenants in common cannot assert adverse possession as against their co-tenants.—*Cooter* v. *Dearborn.*

DIVERSION OF STREAM—OVERFLOW OF LAND—TRESPASS—REMEDY.—The erection of a dam, on a stream of water, causing it to overflow and damage adjacent property, is trespass. The defendant in such case, is not left to his remedy in an action of trespass for an injury which may be continued, but equity will take cognizance of, and perpetually restrain the trespasser from inflicting the injury.—*Stone* v. *Roscommon Lumber Co.*—Filed Jan. 13, 1886.—Mich.

DIVORCE—SETTING ASIDE DECREE.—Where a decree of divorce has been obtained, and there are irregularities which defendant might take advantage of, but he remains silent for a period of two years, his laches will bar an application to set the decree aside afterwards.—*Long* v. *Long*—Filed Jan. 20, 1886.—Mich.

DURESS—PRESENTING CLAIM AGAINST COUNTY—CUMPENSATION FOR FEEDING PRISONERS.—Where a person having a claim against a county for furnishing food for prisoners or other matter, presents his bill and it is allowed, he cannot afterward claim additional compensation for the same service, although he accepts the amount allowed under protest, claiming that it ts not enough. Having filed his bill for the amount because of his urgent need of money, does not amount to duress.—*Cicotte* v. *Wayne County.*—Filed Feb. 3, 1886.—Mich.

ELECTION—CONTEST—ENTITLED TO SALARY FROM DATE OF ELECTION.—Where the election of an officer is contested, and considerable time elapses during the contest, when a final decree awarding the right of holding the office is made, the prevailing party is entitled to the profits and emoluments of the office from the date of the election.—*Philadelphia* v. *Rink.*—Filed Jan. 25, 1886.—Penn.

EMINENT DOMAIN—VALUE OF THE LAND TAKEN—USES TO WHICH THE LAND COULD HAVE BEEN PUT.—Where land is taken by a railway company by the right of eminent domain, and a jury is called to assess the damages, and the damages are assessed at a medium figure between the amounts fixed by witnesses of opposing parties, the verdict will be sustained.—*C. & E. Ry Co.* v. *Blake.*—Filed Jan. 22, 1886.—Ills.

ERROR—PAGING PETITION—REFERENCE IN BRIEF.—The rules of the supreme court require that the pages of the petition and record be numbered, and plaintiff in his brief must refer specifically to the pages of the record which he desires to have examined. A reference to the record by grouping certain pages as "pages 1 to 160 inclusive," is not sufficiently specific. The discovery of new evidence which is merely cumulative, is not sufficient ground on which to base a motion for a new trial.—*State* v. *McCool.*—Filed Feb. 4, 1886.—Kans.

ERROR—WHAT CONSTITUTES—FORECLOSURE SALE WITHOUT STAY.—Where an appeal has been taken, and no exceptions were taken to the ruling of the trial court, no motion made for a new trial, the evidence not included in the record, and where the alligations in the pleadings of the prevailing party were not put in issue, the ouly question which the appellate court can consider is whether the judgment in the case could have been properly rendered under the

pleadings in the case.—*Clay* v. *Hildebrand.* —Filed Feb. 4, 1886.—Kans.

EVIDENCE——OVERDRIVING HORSES—OPINION OF ONE ACCUSTOMED TO THE USE OF HORSES.—In an action by a livery-stable keeper, for injury to horses arising from abuse and overdriving, it is competent for one who is accustomed to driving horses to testify that the horses had been overdriven because thc top of the buggy was covered with mud, and the witnesses opinion as to the effect of the overdriving, and the condition and consequent depreciation in value of the horses, is competent evidence.—*Laird* v. *Snyder.*—Filed Jan. 27,'86.—Mich.

EVIDENCE—DECLARATION TO AN ATTENDING PHYSICIAN PRIVILEGED—OPINION OF PHYSICIAN.—Where a physician is called to attend one who is a prisoner for a crime committed, disclosures made to him by prisoner are privileged communications. This rule is applicable where the prisoner is only an ac complice of the principal in the crime, although the declarations are not a part of the *res gestae.—People* v. *Murphy.*—Filed Jan. 19, 1886—N. Y.

EXEMPTION OF DWELLING HOUSE AND CURTILAGE—APPROPRIATION OF LAND FOR RIGHT OF WAY BY RAILROAD.—By the act of February 19, 1849, a dwelling house with the curtilage thereto belonging, cannot be appropriated by a railway company without the consent of the owner. The amount of land which is included in the curtilage must be determined in each case by the circumstances and the necessity for the proper enjoyment of the house.—*Appeal of Swift.*—Filed Feb. 1, 1886.—Penn.

EXECUTION SALE—REDEMPTION—TITLE ABSOLUTE AT DATE OF REDEMPTION—Where timber standing upon land at the time of judicial sale, is cut and removed between the date of sale and the expiration of the time for redemption, if the land is not redeemed, the purchaser may have an action against the one who cuts and removes the timber, or against his assignee, for the conversion of the timber. The purchaser's title becomes absolute upon failure to redeem, and dates back as of the date of the execution sale.—*Whitney* v. *Huntington.*—Filed Feb. 2, 1886.—Minn.

EXCEPTIONS—WAIVER OF——MOTION IN ARREST OF JUDGMENT.—Where a demurrer is interposed to a declaration and overruled, to which ruling the defendant takes exceptions, and subsequently pleads to the general issue and goes to trial, he will be held to have waived his exceptions. A motion in arrest of judgment will not be granted if the verdict can be reasonably susiained on the evidence and the averments in the declaration.——*Rea* v. *Harrington.*—Filed Feb. 10, 1886.—Vt.

EXECUTOR——EXTENT OF LIABILITY.—Where a residuary legatee is executor, and gives his bond for the payment of all the debts of the deceased, and the estate is insufficient to pay the debts, the executor is not liable on his bond for the deficiency, unless waste is shown.—*Jenkins* v. *Wood.*—Filed Dec. 1885.—Mass.

EXECUTION SALE—DEFAULTING BIDDER—RECOVERY OF BY SHERIFF.—Where one who bids at an execution sale and makes default in payment, the sheriff may recover in an action in his own name against the defaulting bidder. Such action is founded on the contract arising from the bid and its acceptance, and not upon the judgment and execution upon which the sale is made, and it is not necessary to set out the judgment and execution in the complaint or declaration. —*Walker* v, *Braden.*—Filed Feb. 4, 1886. —Kans.

EXECUTORS AND ADMINISTRATORS—COLLATTERAL INHERITANCE TAX—ABSOLUTE ORDER TO SELL.—When a testator bequeathes his residuary estate to his executors, in trust to sell, it works a conversion of the real property, and although the prop-

erty is situated in other states, it becomes liable to the collateral inheritance tax. Where there is an agreement among the legatees that such land may be conveyed by the executors in satisfaction of legacies, this does not avoid the collateral inheritance tax. In such case the legatee takes as purchaser. —*Miller* v. *Commonwealth.*—Filed Jan. 4, 1886.—Penn.

FRAUDULENT CONVEYANCE—BURDEN OF PROOF—PREFERENCE OF CREDITORS.—On hearing of a motion to dissolve an attachment procured upon the ground of fraudulent conveyance of property, where the alleged fraud is denied by defendant, the burden of proof is on the plaintiff. The motion to discharge will be sustained unless such fraud be established by a preponderance of testimony. A conveyance made for the purpose of preferring a bona fide creditor, is not fraudulent.—*Grimes et al* v. *Faarington et al.*—Filed Jan. 19, 1886.—Neb.

FRAUDULENT CONVEYANCE—CONSIDERATION—INTENT.—The payment of a full and valid consideration does not, of itself, prove the absence of fraud. If the property be sold and transferred with intent to defraud creditors, the sale may be set aside, although a full and valid consideration was paid.—*Billings* v. *Sawyer.*—Filed Jan. 19, 1886.—N. Y.

GRADE OF STREET—CHANGING BY A RAILWAY COMPANY—DAMAGES.—Where a railway company changes the grade of a street to accommodate their side tracks, and cause damage to adjoining property, the owners may recover damages therefor. The damages must be assessed up until the time the action was commenced, and for damages accruing subsequeutly, another action may be maintained. A recovery for maintaining a nuisance, is no bar to another action for the continuance of the nuisance.—*Uline* v. *N. Y. C. Ry Co.*—Filed Jan. 19, 1886.—N.Y.

GRAND JURY SYSTEM—CONSTITUTIONALITY OF STATUTE.—An act which forbids the empannelling of a grand jury and provides for the prosecution of crimes and offenses by information, is unconstitutional and void. Laws must not abridge the privileges of any citizen, but afford equal protection to all.—*In Re Lowrie.*—Filed Jan. 8, 1886.—Col.

GUARDIAN—LIABILITY FOR NEGLIGENCE OR MISMAMNGEMENT.—A Guardian is liable to account to his ward for negligence in renting property and thereby failing to make the property as productive as he might have done. He is liable for damages in allowing real estate to be sold for taxes, when he had the means to pay the same, and for any loss to the estate caused by his negligence while the ward is under age.—*Shurtleff, Judge* v. *Rile.*—Filed Oct. 26, 1886.—Mass.

HOLDING TWO OFFICES AT THE SAME TIME—FEDELAL AND STATE.—The constitution prohibits any one from holding two lucrative offices at the same time. The offices of township trustee and post master being lucrative offices, cannot be both held by one at the same time. The state court cannot expel one from the holding of a federal office, but if he persists in holding the federal office, the state court will oust him from that held under the state.—*Foltz* v. *Kerlin.* —Filed Jan. 27, 1886.—Ind.

HORTICULTURAL SOCIETY—STATE APPROPRIATION IN AID OF—An act of the legislature passed in 1883, provides that on certain conditions there shall be $1000 appropriated each year in aid of a horticultural society, and the state horticultural society having complied with the conditions of the statute, seek to compel the state auditor to draw a warrant on the treasurer for that sum. It is *held* that it is the duty of the legislature to specially appropriate that sum each year for that purpose, and in the absence of such enactment the anditor cannot be compelled to draw a warrant therefor.—*People* v. *Struance.*—Filed Jan. 8, 1886.—Colo.

HUSBAND AND WIFE—ANTENUPTIAL CONTRACT—AGREEMENT TO CONVEY.—An agree-

ment by which a man undertakes to cause certain land to be conveyed to his wife if she survive him, entered into before marriage, is effective and will be construed as a conveyance, and a mortgage subsequently placed upon the land by the husband, will not give a lien on the land, although the antenuptial contract be defective in that it is witnessed by only one witness.—*Aultman* v. *Pettys.*—Filed Feb. 3, 1886.—Mich.

HUSBAND AND WIFE—ACTION IN WIFE'S NAME FOR THE UNLAWFUL CONVERSION OF MONEY WHICH SHE CARRIED ON HER PERSON.—In an aetion charging defendant with maliciously taking away plaintiff's pocketbook from where she had lain it down, and unlawfully converting the same and its contents to his own use, it is *held* that the action was properly brought in the wife's name alone, as the property at the time of the taking was in her manual possession. This manual possession of itself gave her the rignt of action, but it was further shown in this case that the property was actually hers, being a gift from her husband.—*Cummings* v. *Friedman.*—Filed Feb. 2, 1886.—Wis.

INFANT—PARTNERSHIP—EQUITABLE RELIEF.—An infant, being a partner in a firm, is induced by creditors of the other partner, to sign a note and execute a chattel mortgage on the firm property, to secure the payment of an individual debt owed by said partner. *Held* that the infant's guardian *ad litem* might have the note and mortgage cancelled in an equitable action, and in such action the other partner need not be joined.—*Salter* v. *Kruger.*—Filed Feb. 2, 1886.—Wis.

INFORMATION—SUFFICIENCY OF—TIME OF COMMISSION OF AN OFFENSE.—Unless time is of the essence of the offense, it is not necessary that the precise time of its commission be stated in the information. A witness may testify to the fact of seeing the offense committed, although he is unable to tell the precise time of its commission. The fact of the commission of the crime may be proven by one witness, and the time by another.—*People* v. *Sheldon.*—Filed Jan. 28, 1886.—Cal.

INNKEEPER—LIABILITY FOR DEPOSIT—WHO IS A GUEST—An innkeeper is responsible for money or valuables deposited with him by a guest of the inn, but not for deposits made by those not guests. One is not a guest of a hotel or inn, unless he is there for the purpose for which people generally go to an inn for accommodations. One who lives in the neighborhood of a hotel and goes in at a late hour of the night and has a room assigned to him, and leaves money or valuables with the clerk for safe keeping, is not a guest of the house in that sense which makes the landlord liable for the safe keeping of his money. To entitle one to the protection contemplated in the statute, he must seek accomodation in the character of a traveler.—*Arcade Hotel Co.* v. *Wyatt.*—Filed Jan. 26, 1886.—Ohio.

INSTRUCTIONS TO JURY—SEPARATE ON SEPARATE QUESTIONS.—Where instructions are asked, and several different questions are involved, each question should be treated separately. On the question of the measure of damages, where the damages are unliquidated, an instruction stating that if the jury fonnd that defendant was guilty of negligence, as charged in the declaration, then plainliff is entitled to recover, although the instruction does not state the rule of comparative negligence, it is not error.—*C. M. & St. P. Ry Co.* v. *Dowd.*—Filed Jan. 25, 1886.—Ills.

INTOXICATING LIQUORS—NO LICENSR TO SELL IN THE COUNTY WHERE PURCHASER LIVES.—A manufacturer of beer having license to sell in the county where he does business, receives an order from a party who lives in another county, and ships the beer to him as ordered. The brewer's agent delivers the beer to the purchaser at the railway depot where the purchaser lives and receives pay for the same. *Held* that the sale was made at the brewery, and that title passed to the purchaser when delivered to

the railway company and consigned to the purchaser, and that the seller did not violate the statute in the transaction. The sale was made in the county where he had a license to sell.—*Sarbecker* v. *State.*—Filed Feb. 2, 1886,—Wis.

INTOXICATING LIQUORS—SALE BY MARRIED WOMAN—POWER OE CITY COUNCIL.—A married woman may execute the necessary bond, and sell intoxicating liquor. A city council has no right to refuse the approval of a liquor dealer's bond if the sureties are good, tha penalty sufficient, and the bond in proper form, as provtded by statute.—*Amperse* v. *City of Kalamazoo.*—Filed Jan. 13, 1886.—Mich.

JUDGMENT—REMITTITUR—INTEREST ON JUDGMENT.—Where plaintiff has obtained a judgment for a given sum and on appeal the amount of the judgment is held to be excessive, and the case is remanded for a new trial unless the plaintiff remits the adjudged excess, and plaintiff does enter a *remittitur* for such excess, the plaintiff is entitled to interest on the amount of the judgment left standing, from the date of entering the same. —*McLymans* v. *City of Lancaster.*—Filed Feb. 2, 1886.—Wis.

JUDGMENT BY DEFAULT—CONCLUSIVENESS AS TO WHAT—ACTION TO QUIET TITLE. —A judgment by default is conclusive only as to matters averred in the complaint; but in an action to foreclose a mortgage, a defendant who suffers judgment by default, will be conclusively presumed to have no title adverse to plaintiff.—*Barton* v *Anderson.* —Filed Jan. 22, 1886.—Ind.

JURISDICTION OF APPELLATE COURT—BILL TO REMOVE A CLOUD FROM TITLE.—The appellate court has no jurisdiction in a case involving a freehold, but it has jurisdiction in an action to remove a cloud from the title when the question of freehold is not involved, and in all cases to remove a cloud, it has jurisdiction so far as to determine whether a question of freehold is involved or not. An error in deciding the question of freehold is ground for reversal, but cannot be attacked collaterally.—*Miller* v. *Pence.*—Filed Jan. 25, 1886.—Ills.

LEASE—CLAUSE OF FORFEITURE—LESSOR MUST DECLARE A FORFEITURE BEFORE PUTTING A SECOND LESSEE IN POSSESSION.—Where an owner of land has executed a lease, in which there is a clause of forfeiture, giving the lessor the right to enter and declare the lease forfeited on the breach of a covenant in the non-payment of rent, the lessor cannot make a second lease to another party, and put the second lessee in possession; until he has made some attempt to declare a forfeiture of the first lease.—*Joyce* v. *Lynch.*—Filed Jan. 4, 1886.—Penn.

LEASE—MADE BY THE SURVIVING MEMBERS OF A FIRM—NOT A VIOLATION OF THE NEW YORK STATUTE.—A firm doing business in Philadelphia, had a branch house in New York City. Subsequent to the death of one of the partners, the firm rented a part of their New York building. A statute in New York prohibits any one from transacting business in the name of a partner not interested in the firm. *Held* that the renting of the said building was not in violation of said statute, as it was not an ordinary incident of the business.—*Sparrow* v. *Kohn.*—Filed Oct. 12, 1885.—Penn.

LIBEL—PRIVILEGED NEWSPAPER PUBLICATIONS—ALLEGATIONS CONCERNING A CANDIDATE FOR OFFICE.—The publication of allegations of crime, or defamatory matter, concerning one who is a candidate for a public office, that are false, although the publisher believes them to be true, though made without malice, are not privileged. If published in good faith, this fact may go to mitigation of damages.—*Bronson* v. *Bruce.* —Filed Feb. 3, 1886.—Mich.

LIBEL.—PRIVILEGED COMMUNICATIONS—PRESUMPTION OF MALICE.—Whether a communication be privilege or not is a question

of law. Any communication made on a proper occasion for probable cause and with a proper motive, is privileged. When a communication is so made, no malice is implied, and if not affirmatively proven, no recovery can be had. Where inquiry is made of one regarding the character of another and he answers that he believes him to be a thief, from information received from others, the communication is privileged. Charging a crime upon one who is a candidate for office, if based upon probable cause, is privileged.—*Briggs* v. *Gartett.*—Filed Jan. 25, 1886.—Penn.

LIEN OF JUDGMENT—EXTENDED BEYOND THE LIMIT OF SEVEN YEARS, BY THE ISSUE OF EXECUTION.—The issue of an execution within a year after judgment and kept alive, although not retnrned until after the expiration of seven years from the date of the judgment, and the property levied upon is sold, the lien of the judgment will be preserved, and take priority over judgments that are junior.—*Barth* v. *Com. Nvt. Bank.*—Filed Jan. 25, 1886.—Ills.

LIFE INSURANCE—FAILURE TO PAY PREMIUM—NOT EXCUSABLE BECAUSE THE COMPANY FAIL IN SOME OF THE CONDITIONS OF THE POLICY.—The failure of one party to a contract to fulfill some of the conditions, does not justify the other in refusing to perform his part, unless the failure of the former is of conditions precedent. Where a life insurance company issues a policy on the *Tontine* plan, and fails to keep the funds of the company separately invested as agreed, the assured is not thereby justified in withholding the preminm on the policy.—*Bogardus* v. *N. Y. Life Ins. Co.*—Filed Jan. 19, 1886.—N. Y.

LIFE INSURANCE—STATEMENTS IN APPLICATION A PART OF THE CONTRACT.—Where by the terms of a life policy the assured warrants the truthfulness of his answers or statements in his application, and it is provided that if said answers or statements are false the policy shall be null and void, the assured is bound by his warranty. Even though he innocently made a false statement of a material fact, the policy will be void *ab initis.*—*C. M Life Ins. Co.* v. *Pyle.*—Filed Jan. 26, 1886.—Ohio.

LIFE INSURANCE—CONFLICTING STIPULATIONS.—In a policy of life insurance where there are two stipulations, relating to the same subject matter, the one general and the other specific, and inconsistent with each other, the latter will govern. Where it is set up in defense that the application contained material statements which were false, the burden of proof is on the defense and not on the plaintiff.—*N. M. Life Ins. Co.* v. *Hagelett.*—Filed Jan. 27, 1886.—Ind.

MANDAMUS—COMPELLING COURT TO TRY A CASE.—*Mandamus* may issue to review the ruling of the lower court in quashing an indictment, and the lower court may be compelled to try the case.—*Pros. Att'y* v. *Judge, Rec. Court.*—Filed Feb. 3, 1886.—Mich.

MANDAMUS—BILL OF EXCEPTIONS—MONEY LOANED TO A MEMBER OF A FIRM.—Mandamus will issue to compel a judge to sign a bill of exceptions, and the delay caused by the judge's refusal, and the necessary legal proceadings, will not prejudice the interest of the party unless he himself is at fault. One loaning money to an individual member of a partnership, must look to him individually for payment, and this rule will not be affected by any representations as to what use was to be made of the money.—*Ah Lop* v. *Gong Choy.*—Filed Jan. 20, 1886 —Ore.

MARRIAGE—DOUBLE MARRIAGE BY ONE CEREMONY—SUBSEQUENT MARRIAGE.—A ceremony of marriage performed, whereby a man undertakes to become the husband of two women at one and the same time, is void and of no effect, and if the man be subsequently married to one woman, the latter marriage is valid, as if the former

marriage had not been performed.—*United States* v, *Snow*.—Filed Feb. 6, '86.—Utah.

MASTER AND SERVANT—FELLOW SERVANT—RAILWAY EMPLOYES RUNNING A TRAIN ON A CONNECTING ROAD.—An employe of the A. railway company, which by contract with the B. railwav company, ran its train over the track of the latter for a certain distance, was injured while running the train over the track of the latter company, by reason of the negligence of an employe of the latter company. In an action for damages it is *held* that the employes on the train are not fellow servants with the employes of the company owning the track.—*Zeigler* v. *D. & N. Ry Co.*—Filed Sept. 5, 1885.—N. J.

MASTER AND SERVANT—EXTRAORDINARY DANGER AND RISK.—Where an employe enters upon work attended with extraordinary danger, fully knowing the danger to which he is exposed, the employer is not liable for injuries recieved in the work, unless caused by his fault or neglect.—*Joyce* v. *City of Worcester*.—Filed Oct. 26, 1885.—Mass.

MASTER AND SERVANT—EXTRA HAZARDOUS WORK—INJURY BY NEGLIGENCE OF FELLOW SERVANT.—Where an employe engages in work more than ordinarily dangerous, fully knowing the danger to which he is exposed in the work, and is injured by reason of the negligence of a fellow servant, the employer is not liable for damages for the injury.—*Campbell* v. *Penn. Ry Co.*—Filed Jan. 4, 1886.—Penn.

MASTER AND SERVANT—INJURY TO AN EMPLOYE—NEGLIGENCE.—Where, in a building used for a work-shop, there is a chute used for conveying debris, and during the making of repairs in the building, the chute is uncovered or partially uncovered, but is in an out-of-the-way place, and an employe slightly under the influence of whisky, is injured by falling through the opening, there is not such negligence on the part of the employer, as will make him liable for the injury sustained.—*Wanamaker* v. *Bnrke*.—Filed Jan. 25, 1886.—Penn.

MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY OF SERVANT—NEGLIGENCE.—In an action for damages for the death of plaintiff's intestate, when in the complaint it is alleged in general terms that the defendant company carelessly and negligently ran its snow-plow upon the deceased causing his death, the plaintiff has a right to show culpable negligence on the part of the company or its managing officers, and that the injury was not caused by the negligence of a fellow servant.—*Larson* v. *St. P. M. & M. Ry Co.*—Filed Feb. 3, 1886.—Minn.

MORTGAGE—FRAUDULENT CONVEYANCE—MADE TO COVER A NOMINAL DEBT.—Where a mortgage is executed and delivered, to secure the payment of a debt which has never been demanded, the mortgagor himself making inquiry as to how much the debt is, and then in a spirit of liberality acknowledging the debt to be greater than the creditor insisted upon, these facts constitute a badge of fraud, and when confirmed by surrounding circumstances, the mortgage will be declared void.—*Hunt* v. *Shier*.—Filed Jan. 20, 1886.—Mich.

MORTGAGE—PRESUMPTION OF PAYMENT AFTER LAPSE OF TWENTY YEARS.—Where no payment of interest or principal has been made on a mortgage for a period of twenty years, it will be presumed to have been paid. The fact that it is customary to take a mortgage payable one year after date and to extend it or allow it to remain from year to year as an investment, is not sufficient to rebut the presumption of payment, after a lapse of twenty years.—*Michener* v *Michener*—Filed Jan. 25, 1886.—Penn.

MORTGAGE—BELONGING TO DECEDENT'S ESTATE—WHO MAY FORECLOSE.—The executor or administrator of a mortgaee, is entitled to a note and mortgage belonging to the decedent, and the right to foreclose

the mortgage rests in him and not in the heirs. A power of attorney executed and delivered, authorizing the attorney to discharge and release the mortgage, deposited in escrow, at the the death of the mortgagor the power of attorney becomes inoperative. —*Cit. Nat. Bank* v. *Dayton.*—Filed Jan 22, 1886.—Ills.

MORTGAGE–DEED ABSOLUTE ON ITS FACE. —At the time of executing a deed it is orally agreed that the consideration shall be the cancellation of a certain debt, and the grantor agrees that he will make good any deficiency existing in the payment of the said debt, if the grantee by sale of the land, does not realize enough to cover the debt, and on the other hand if the land is sold for an amonnt which leaves a surplus over the debt, such surplus to be paid to the grantor. *Held* that such a deed is absolute, and cannot be construed to be a mortgage.—*Manasse* v. *Dinklespiel.*—Filed Jan. 27, 1886.—Cal.

MORTGAGE—LIABILITY FOR DEFICIENCY. —Where a mortgage is collateral to an obligation which could be enforced at law, the morgagor or his estate is liable for a claim for deficiency.—*Sheldon* v. *Warner's Estate.* —Filed Feb. 3, 1886.—Mich.

MORTGAGE—FORECLOSURE OR ALTERNATIVE DECREE.—Where, in an action upon a judgment of foreclosure of a mortgage, the decree is made in the alternative, that the defendant pay a given sum, or that the mortgaged premises be sold, if the first be not performed, the second becomes operative. *Burgess* v. *Southey.*—Filed Dec. 23, 1885. —R. I.

MORTGAGE—ABSOLUTE DEED CONSTREED AS.—A deed of conveyance absolute on its face, may be shown by parol testimony to have been intended as security for a debt, and if so, it will be construed and held to be a morigage. When the testimony on the question is contradictory, and evenly balanced, circumstances may give a preponderance to one side or the other.—*Workman* v. *Greening.*—Filed Jan. 22, 1886.—Ills.

MORTGAGEE IN POSSESSION–FORECLOSURE —PURCHASE BY AN APPRAISER—A mortgagee in possession of real estate, in foreclosure proceedings sustains the relation of trustee, and cannot hold adversely as against the mortgagor. A purchase of property at foreclosure sale, by one who has appraised the property, is strictly prohibited by statute and is void.—*McKeighan* v. *Hopkins.*—Filed Jan. 19, 1886.—Neb.

MOTION FOR A NEW TRIAL—INSTRUCTIONS. —In a motion for a new trial, based upon exceptions to instructions given or refused, the point excepted to must be identified in the motion. On appeal the judgment of the lower court will not be disturbed, unless the errors complained of appear in the record.—*Weir* v. *B. & M. Ry Co.*—Filed Feb. 10, 1886.—Neb.

MUNICIPAL CORPORATIONS—CONSTRUCTION OF SEWERS OF INSUFFICIENT CAPACITY —LIABILITY FOR DAMAGES.—In the excercise of a discretionary power which results in injury to property, and which the city could have prevented, the city is liable for all damage caused. Where a city constructed a main sewer of insufficient capacity, which overflowed by heavy rains, and additional tributary sewers were constructed without regard to the damage likely to accrue, and the water burst out through the man-holes and injured property, *Held* that the city was liable.—*Seifurt* v. *City of Brooklyn.*—Filed Jan. 19, 1886.—N. Y.

MUNICIPAL CORPORATIONS—POWER OF PARK COMMISSIONERS TO IMPROVE STREETS. —A resolution passed by the board of public works for the improvement of certain streets, in the absence of any ordinance of the council to that effect, is valid. The act of 1866 gave the power to park commissioners to make such improvements at their discretion. —*In Re Knaust.*—Filed Jan. 19, 1886.—N. Y.

MUNICIPAL CORPORATIONS—SPECIAL ASSESSMENTT—WAIVER OF OBJECTIONS.—No-

tice of special assessments by the park commissioners of Chicago, must be published at least ten days before application to confirm by the court. Objection to the assessment on the ground of want of equity, will be held to be waived, unless taken at the time and in the manner prescribed by statute.—*LeMoyne* v. *W. C. Park Com'rs.*—Filed Jan. 25, 1886.—Ills.

NEGLIGENCE—COLLISION OF A STREET CAR WITH A LOCOMOTIVE—DEFECTIVE BRAKES.—Where, by reason of defective brakes on a street car, a collission occurred with a locomotive, and a passenger on the street car was injured, the street car company is held liable for damages for the injury.—*People's Pass. Ry Co.* v. *Weiller.*—Filed Jan. 25, 1886.—Penn.

NEGLIGENCE—RINGING THE LOCOMOTIVE BELL WHEN IT WOULD BE NEGLIGENCE NOT TO RING IT.—Where a railway track runs adjacent to a highway and parallel to it, and in approaching a crossing it is the duty of the engineer to ring the bell on the locomotive, if by so doing the ringing of the bell causes horses to be frightened, by reason of which the horses and the driver are injured; although the engineer knew that the ringing of the bell was likely to cause injury, yet it was his general duty to ring it and he cannot be charged with negligence in doing so.—*Fouhy* v. *Penn. Ry Co.*—Filed Jan. 25, 1886.—Penn.

NEGLIGENCE—MUST BE PROVEN—INJURY AT STREET CROSSING.—Negligence must be affirmatively proven when it is the question at issue, and cannot be presumed. Where a railway track is crossed by a highway, the track itself is a signal of danger to persons travelling on the highway, and when about to cross, it is incumbent upon them to use prudence and care, and look out for an approaching train. If they fail to do so, and are injured while in the act of crossing, they are guilty of contributory negligence which will bar recovery in an action against the company.—*Mynning* v. *D. L. & N. Ry Co.*—Filed Jan. 20, 1886.—Mich.

NEGLIGENCE—WHEN IT IS A QUESTION FOR THE JURY.—In an action against a railway company for damage for causing the death of a person, where the question of negligence of the company is involved, and there is evidence tending to show such negligence, the case should be submitted to the jury. The question of negligence is one of fact, and must be determined by the jury.—*Sheldon* v. *Flint & P. M. Ry Co.*—Filed Jan. 20, 1886.—Mich.

NEGLIGENCE—CELLAR DOOR PROJECTING ABOVE SIDEWALK—INJURY—DAMAGES.—Where the owner of premises in a city, allows a cellar door to be partially open, projecting above the walk, and a party walking along the sidewalk, slips on the ice near to the said cellar door, and falls against it and is injured, it is *held* that the projection of the door was not the proximate cause of the injury, and the plaintiff cannot recover damages of the owner of the premises for the injury.—*Hunter* v. *Waunemaker.*—Filed Jan. 25, 1886.—Penn.

NEGLICENCE—ACCUMULATION OF COMBUSTIBLE MATTER ON RAILWAY TRACK.—If a fire occurs on a railway track, by reason of an accnmulation of combustible matter on the track, and extends to and destroys other property, the company is liable for the damages. The question of negligence in not removing such combustible matter, is a question of fact for the jury. The fact being once established that the fire originated from such accumulation of matter on the track, the burden of proof is on the company to show the absence of negligence.—*Jones* v. *M.C. Ry Co.*—Filed Jan. 27,1886.—Mich.

NEGLIGENCE—DAMAGES ARISING FROM WORK IMPROPERLY DONE.—Plaintiffs undertook to dye certain buntings or cloths for defendant. In the process the goods were "pulled" as it is termed and thereby injured.

In an action for the charge for dying, the defendants set up a counter-claim for damages. The referee computed the damages at the difference between what the goods actually sold for, and what they would have sold for if properly dyed. *Held* that the finding was correct under the evidence.—*Barretts'* v. *Wheaton.*—Filed Jan. 19, 1886.—N. Y.

NEGOTIABLE INSTRUMENTS—PARTNER USING FIRM NAME IN ENDORSING A NOTE. A partner, having charge of the financial business of the firm, exchanges notes with a third party, for the accommodation of the latter, signing the firm name. When the firm's note matures, he endorses the firm name on the note held in exchange, and uses it to take up the firm's note. *Held* that such endorsement is within the range of his authority, and is valid.—*Steuben Co. B'k* v. *Alburger.*—Filed Jan. 19, 1886.—N. Y.

NEW TRIAL—MOTION AFTER TERM—MOTION TO SET ASIDE ORDER FOR.—A motion for a new trial, after term time, need not show the date of the judgment, nor that a sufficient bond has been filed, when the record otherwise shows it. After an order for a new trial has been granted, where one of two defendants was entitled to it as of right, the court will overrule a motion to set aside the order. The motion to set aside the order, should relate only to the defendant who was of right entitled to it.—*Hebard* v. *Wines.*—Filed Jan. 28, 1886.—Ind.

NEW TRIAL—MOTION FOR MUST BE IN WRITING.—Where the record, on appeal, does not show that a motion for a new trial had been reduced to writing, it will be presumed that it was not, and the judgment will be sustained.—*Douglass* v. *Insley.*—Filed Feb. 4, 1886.—Kans.

NEW TRIAL—STATEMENT ON WHICH MOTION IS BASED—AMENDMENT TO PLEADINGS.—If a motion for a new trial is not based on a statement of errors of law or of fact, on which the moving party relies, it is insufficient; and the decision of the trial court will be held to be conclusive. In a trial in equity it is within the discretion of the court to allow amendments to the pleadings at any stage of the case, or to allow a jury trial, and unless there is a clear abuse of that discretion, the appellate court will not disturb the judgment or decree.—*Graham, Ex'r* v. *Stewart.*—Filed Jan. 26, 1886.—Cal.

NOTICE—LIS PENDENS—CONTINUOUS PROSECUTION.—A purchaser during the pendency of a suit will be charged with notice of such suit. But to charge the purchaser with such notice, there must be a continuous prosecution of the suit. Where suit was appealed and judgment reversed and remanded, and the complainant failed to file the mandate of the supreme court in the lower court for four years, a purchaser taking during that interval is not charged with notice.—*Durand* v. *Lord.*—Filed Jan. 25, 1886.—Ills.

NOTICE OF WITHDRAWAL FROM A PARTNERSHIP—CHANGE OF FIRM NAME.—Where a firm name of itself, indicates the individual names of the partners, the change of the firm name will of itself be sufficient notice to the customers of a firm, of the withdrawal of a partner, but when the firm name does not indicate the iudividual names, the change in the name of the firm will not be held to be notice. A non-resident partner must give notice to his customers of his withdrawal from the firm, in order that he may avoid liability.—*Cogswell* v. *Davis.*—Filed Feb. 2, 1886.—Wis.

OPEN VENIRE—DISCRETION OF THE OFFICER—CONSPIRACY.—When an open *venire* is placed in the hands of an officer to be served, the officer has large discretion as to whom he summons, and unless he abuses that discretion, there can be no substantial objection raised to the jury. In a trial for conspiracy to entice victims to a house of ill-fame, notes written by the keeper of such disreputable house, to her intended victims, may be put in evidence.—*People* v. *Hampton.*

—Filed Feb. 6, 1886.—Utah.

PARTNERSHIP—TOWNSHIP FUNDS—ACCOUNTING.—Where one of the members of a partnership was township treasurer, and deposited township moneys with the firm money in the name of the firm, and while the account is being thus kept, the firm is dissolved and the one who is township treasurer continues the business assuming all the liabilities of the firm. It is subsequently discovered that there is a shortage in the township funds, which was not included in the settlement between the partners. The township treasurer pays the debt to the township, and then brings an action against his former partner for contribution. *Held* that the money having been used by the firm in violation of law, both parties being *particeps criminis*, the law would not aid him in recovering the amount due.—*Davis* v. *Gilhaus*.—Filed Feb 23, 1886.—Ohio.

PARTNERSHIP——RETIRING PARTNER—PROPERTY TRANSFERED TO THE REMAINING PARTNER.—Where one partner sells and transfers his interest in the partnership property to the other partner, the latter acquires absolute control of the property and the right to sell or dispose of it in payment of his individual debts, the same as though he had always owned it in his own right. The retiring partner will be held liable for firm debts.—*Stanton, Receiver* v. *Westover*.—Filed Jan. 19, 1886.—N. Y.

PARTITION—INTERLOCUTORY JUDGMENT—SUBSEQUENTLY SETTING UP WANT OF TITLE IN PETITIONER.—In proceedings for partition where an interlocutory judgment has been rendered and assented to by respondents, want of title in the petitioner cannot afterwards be set up. In making partition, the commissioners may award a portion of the land to one together with an easment of right of way over a portion awarded to another. —*Mt. Hope Iron Co.* v. *Dearden*.—Filed Jan. 7, 1886.—Mass.

PARTNERSHIP—DEATH OF PARTNER—COLLECTION OF DEBT FROM ESTATE OF DECEDENT DUE THE COPARTNERSHIP.—Where one partner in a firm dies owing a debt to the firm of which he was a member, before the surviving partner or partners can collect the debt due the firm they must first ascertain if the firm assets will pay the partnership debts, as provided in section 1585 of the code of civil procedure.—*Painter* v. *Estate of Painter*.—Filed Jan. 27, 1886.—Cal.

PARTNERSHIP—LIEN OF ONE PARTNER FOR ADVANCEMENTS TO THE FIRM.—Where a partner advances money to pay a firm debt, he thereby acquires a lien on the assets of the firm for the amount of the advancement. A purchaser of the interest of a partner, takes subject to such lien by another partner, and such partner holding a lien is not estopped from asserting his lien, by his silence when the purchase was made. *Taylor* v. *Farmer, Adm'r*.—Filed Jan. 25, 1886.—Ills.

PRINCIPAL AND AGENT—AGENT SHARING IN THE PROFITS—ACCOUNTING.—In a general verbal agreement whereby an agent agreed to sell goods and to receive one-half the profits, the business was carried on for two years before any final accounting, and then the principal and agent disagreeing as to the computation of the profits, they finally agreed that a division should be made on the basis of the *net* profits. *Held* that this agreement was valid, that there had been no previous accounting which proved a bar to the adjustment on the basis of the subsequent agreement.—*Jones* v. *Ricards*.

PRINCIPAL AND AGENT—RATIFICATION OF AN UNAUTHORIZED ACT.—Where one represents himself falsely as the agent of another, purchases goods and appropriates them to his own use, and a bill or invoice is sent to the principal to which he makes no response, and subsequently after agent has made part payment of the bill, the principal says to the seller he will see that the balance is paid: *Held* to be a ratification of the agency, and

he is liable for the bill.—*Heyn* v. *O'Hagan.* —Filed Feb. 17, 1886.—Mich.

PRINCIPAL AND AGENT—AUTHORITY OF—FAILURE OF PRINCIPAL TO OBJECT.—Where one acting as the agent of another, purchases goods which are shipped to the alleged principal and bills are sent him in due course of business, and he makes no objection, or no reply, and subsequently an action is brought to recover for the purchase money, the question of the authority of the agent to make the purchase, and the question of his liability is a question of fact, which is properly left to the jury.—*Sturtevant* v. *Wallace.* —Filed Feb. 25, 1886.—Mass.

POOR LAW—ACQUIRING A SETTLEMENT—WHEN A CHILD ACQUIRES A SETTLEMENT BY VIRTUE OF PARENT'S SETTLEMENT.—An alien settled in a town in 1859, and was naturalized, remaining where he first settled until 1866. Then he moved to another town, and in 1876 died after having acquired a settlement in the latter place. A daughter born in the former place was ten or eleven years old when her father died, and she being destitute the town where her father died rendered her support and brought an action against the town where she was born for the amount expended for her. *Held* that her father prior to his death had acquired a settlement in the latter town, and the residence of the father was the residence of his infant child, and the action could not be maintained.—*T. of Vernon* v. *T. of Ellington.*—Filed Feb. 13, 1886.—Conn.

PROMISSORY NOTE—PAYMENT OF ONE DEBT DUE CANNOT BE SATISFACTION OF ANOTHER.—Where a party had signed two accommodation notes, and upon maturity of one, the holder agreed that if he would pay the one then due, he would collect the other of the original debtor, and failing to make the collection of the note, he brings an action against the party for the second note. *Held* that the law of principal and snrety did not apply: that it was not clear that the plaintiff agreed to do more than try to collect the second note.—*Bragg* v. *Danielson.* —Filed Feb. 27, 1886.—Mass.

PROMISSORY NOTE——EXTENSION—RELEASE OF ENDORSER.—The extension of a note by agreement of the maker and the holder, without the consent of the endorser, releases him from liability thereon. His assent to the extension must be definite and explicit. Where the endorser requested the holder to give the maker all the time he could, but not to grant an extension for any definite length of time, and the extension was granted for ninety days, the endorser is released from liability.—*Siebeneck* v. *Anchor Savings Bank.*—Filed Jan. 4, 1886.—Penn.

PROCESS—SERVICE BY PUBLICATION—FAILURE TO SEND COPY OF SUMMONS BY MAIL WHEN ADDRESS IS KNOWN.—In making service by publication, the requirements of the statute must be strictly complied with. Where the address of defendant is known and the record does not show that a copy of the summons was sent by mail, such service will be held not good. The defendant has forty days in which to plead.—*O'Rear* v. *Lazarus.*—Filed Jan. 29, 1886.—Colo.

PROBATE COURT—ORDER ON EXECUTOR TO PAY CERTAIN ALLOWANCES—MAY BE ENFORCED BY COMMITMENT FOR CONTEMPT—An order of the probate court upon an executor to pay certain allowances out of the assetts of the estate, does not create a personal debt of the executor aud such order may be enforced by imprisonment for contempt. The order simply imposes a ministerial duty.—*Leach* v. *Peabody.*—Filed Feb. 26, 1886.—Vt.

QUI TAM ACTION—INDICTMENT FOR CONDUCTING A LOTTERY—PROSECUTING WITNESS NEED NOT BE DISCLOSED.—In a prosecution to recover a penalty it is not necessary that the name of the prosecuting witness be disclosed. An indictment charging that defendant was engaged in "a lottery scheme, or game of chance," is not bad for duplicity.

An indictment that respondent caused an advertisement of a lottery to be inserted in a paper published in another state, which circulated in the state where the action is brought, is bad.—*State* v. *Willis, Jr.*—Filed Dec. 30, 1885.—Me.

RAILROADS—CHANGE OF DESTINATION WHILE IN TRANSIT—WHAT THE CONTRACT OF BILL OF LADING IS, IS A QUESTION OF LAW.—A consignee doing business in East St. Louis having goods consigned to him at St. Louis, directed the carrying company whose line terminated at East St. Louis, to stop his goods at that point, and to deliver the goods to him there. *Held* that notwithstanding such instructions, the company had a right to deliver the goods to a connecting company to be forwarded across to St. Louis.—*W.St.L.&P. Ry Co.* v. *Jaggerman.*—Filed Jan. 25, 1886.—Ills.

RAILROAD AID TAX—TRANSFER OF THE FRANCHISE TO A NEW COMPANY.—Where a town or a county has voted a tax in aid of a railroad and to receive stock therefor, and the company sells their stock and franchises to another company before the tax is levied, the new company has no right to enforce the levy of the tax.—*Crooks, Auditor* v. *State.*—Filed Jan. 30, 1886.—Ind.

RAILROAD COMPANIES—TRANSFER OF FRANCHISES—LIABILITY OF GRANTEE FOR UNDERTAKINGS OF THE GRANTOR.—Where a railway company construct their road and land has been taken for right of way for which it has not paid the owner damages due, and the property and franchise of the road are sold and transfered to another company, which operates the road, the latter is liable for the damages to the land owner from whom the right of way was taken or obtained and the former company need not be made a party in the action.—*Bridgeman* v. *St. J. &L. C. Ry Co.*—Filed Feb. 10, 1886—Vt.

RAILROAD COMPANY—CROSSING HIGHWAYS—INJURY TO ANIMALS—DUTY TO FENCE.—Where a railway company fails to comply with the statute in erecting cattle guards or fences, and cattle are injured; the company is liable for damages, although the owner of the cattle may be guilty of contributory negligence. One who borrowed a horse to ride a distance, went upon the railroad track, and the horse becoming frightened at an approaching train, ran along the track to a tressel-work and was killed by the train. *Held* that the rider was the agent of the owner, and the owner could not recover against the company.—*Welty* v. *I. &V. Ry Co.*—Filed Jan. 21, 1886.—Ind.

REBUILDING BY INSURANCE COMPANY—ELECTION MUST BE MADE BEFORE RIGHT OF ACTION ACCRUES.—Where the conditions of a policy of insurance are that proof of loss must be made within thirty days, and the loss shall be payable in sixty days after the making of such proofs, the company must exercise its right of election to rebuild or to pay the loss, before the time of payment arrives, otherwise it will be held to have waived its right to rebuild, and must respond in cash settlement of the loss.—*Clover* v. *Greenwich Ins. Co.*—Filed Jan, 19, 1886.—N. Y.

RECEIVER—ARBITRATION—ACTION AFTER SETTLEMENT.—Where a receiver has been appointed, and funds of the parties come into his hands pending litigation, upon a settlement of the dispute by arbitration, the prevailing party brings suit against the receiver for the recovery of the funds in his hands, such suit will not be stayed pending a suit by the unsuccessful party, brought by a bill in equity to reopen the whole matter.—*Kelderhouse* v. *Hall.*—Filed Jan. 25, 1886.—Ills.

RECITALS IN A DEED—CONVEYANCE BY HUSBAND TO WIFE—CONSIDERATION—NOTICE TO PURCHASER.—Recitals in a deed are ordinarily presumed to be true, but a recital of the fact that the grantor has other property sufficient to pay his debts, is of no force as evidence of the fact recited. Where a conveyance is made by a husband to his

wife in consideration of love and affection, it is not good as against subsisting creditors, and a perchaser from the wife is bound to take notice of the fact at his peril.—*Milholland* v. *Tiffany*.—Filed Feb. 27,1886.—Md.

REFORMING SCHOOL DIRTRICTS—AUTHORITY OF INSPECTORS.—Where it is sought to detach territory from one school district and annex it to another, notice of the joint meeting of inspectors, must be posted as required by statute, or the boards have no jurisdiction in the matter. Territory cannot be so detached and districts reformed, where a school house has been erected within three years in the district, without the consent of the parties interested.—*Coulter* v. *Inspectors*.—Filed Jan. 27, 1886.—Mich.

REFERENCE—REAPPOINTMENT OF AUDITOR—CONTINUANCE OF THE CASE.—Where a case has been referred to an auditor and the case continued from term to term, the auditor will be presumed to have been continued without a reappointment unless the original appointment has been revoked. —*S. & H. Quarry Co.* v. *Campbell*.—Filed Oct. 23, 1885.—Conn.

REPRESENTATIONS TO A COMMERCIAL AGENCY—FRAUDULENT REPRESENTATIONS—ATTACHMENT.—Where a party in answer to a question says he has $5000 capital, although it be borrowed capital, he is not bound to state that fact unless the question is asked whether it is borrowed capital or not. One having made such statement to a commercial agency and having obtained a credit in the purchase of goods, cannot be attached on the ground that the debt was fraudulently contracted. Where such representations are made by a buyer, it must be clearly shown that they were made with fraudulent intent.—*Dickerhoff* v. *Brown*. —Filed Jan. 15, 1886.—Md.

REPLEVIN—VERDICT—JUDGMENT.—A judgment in replevin should award the property to plaintiff together with damages for its detention, and if the property cannot be recovered, then its value, as determined by the jury. In case the jury do not find the value of the property, a judgment may be entered for the return of the property, and the judgment may be enforced by execution but not by punishment for contempt. After a verdict awarding the property to plaintiff, the court caused judgment to be entered for return of property and costs. *Held* error. *Hammond* v. *Morgan*.—FiledJan. 19, 1886. —N. Y.

REPLEVIN—GENERAL DENIAL—WHAT DEFENDANT MAY PROVE—In an action of replevin by a receiver appointed, to recover certain cars, the defendant interposed a general denial, and offered to show that he obtained title from another, before the cars were sold to the company of which plaintiff was receiver. This offer was denied. *Held* error. the defendant in such case was entitled to controvert by evidence everything which the plaintiff in the first instance is bound to prove, to make his case.—*Griffin, Receiver* v. *Long Islana Ry Co*.—Filed Feb. 2, 1886.—N. Y.

RESCINDING CONTRACT—CONSIGNMENT TO A BROKER TO BE SOLD TO AN UNDISCLOSED PRINCIPAL, NOT A SALE TO THE BROKER.—Where property is delivered to a broker to be sold by him to a purchaser in good credit, and the broker stores the property in a warehouse and pledges the warehouse receipt as collateral for money borrowed by him, the owner may recover the property in an action of replevin as against the party who loaned money on such warehoune receipt.—*Rodliff* v. *Dallinger*.—Filed Jan. 11, 1886.—Mass.

RIPARIAN ACCRETIONS—RIGHTS OF ADJACENT OWNERS AS AGAINST THE STATE.—Accretions beginning at the shore in a river, and gradually extending inward towards the river, belong to the adjoining owner, but if the accretions begin in the river and gradualiy increase, they belong to the state. Where any considerable tract of land is formed suddenly,cast up or by a recession of

the water, it belongs to the state.—*Linthicum* v. *Coan.*—Filed Jan. 26, 1886.—Md.

RESIDENCE—DETERMINED BY ACTS AND EVIDENCE OF INTENTION.—Where a house stands upon a county line and a party takes possession of it and opens it as a hotel, the act of taking out a hotel license in either one of the counties, is sufficient evidence of his election as to which of the two counties he intends to choose as his residence.—*Folweitzer* v. *Lutz.*—Filed March 1, 1886.—Penn.

RIGHT OF TRAVELLER ON STREET—DANGEROUS STRUCTURE NEAR THE STREET—TRAVELER STOPPING NEAR SUCH STRUCTURE—NOT GUILTY OF NEGLIGENCE.—The owner of a building standing in close proximity to the street, which building is in an unsafe condition, is liable for injury caused to a traveler on the street by the falling of the building, and the fact that the traveler who was injured thereby stopped and remained on the street opposite the building for some time, cannot be construed as negligence on his part.—*Hnssey* v. *Ryan.*—Filed Jan. 15, 1886.—Md.

RIGHT TO ASSIGN A LIFE POLICY—LIMITATIONS AS TO NOTE AND MORTGAGE.—The holder of a life policy, may assign it to his wife or children free and clear from all claims of his creditors. The statute of limitations will run as against a note secured by a mortgage, but an action will lie on the covenant in the mortgage for a period of twelve years. *Earmshaw* v. *Stewart.*—Filed Feb. 5, 1886.—Mich.

ROBBERY—COMMON-LAW INFORMATION—INSTRUCTIONS AS TO TESTIMONY OF ACCUSED.—A prosecution for robbery cannot be commenced by a common-law information. It is not error to instruct the jury that they should take into consideration the interest that defendant has in the results of the trial, when weighing his testimony in his own behalf.—*People* v. *Calvin.*—Filed Feb. 17, 1886.—Mich.

SALE—PRELIMINARY WARRANTY, NOT EMBODIED IN THE WRITTEN CONTRACT.—In the sale of machinery or other property, the preliminary negotiations are all merged into the final written contract, and any conditions verbally agreed upon, unless incorporated in the written contract, are of no binding force. Where a machine was warranted, and warrantor agreed to make good the warranty, if notified within ten days from date of delivery, if not notified of any defect before the expiration of ten days, his warranty is no longer binding.—*Brown* v. *Russell.*—Filed Jan. 23, 1886.—Ind.

SALE—PROMPT DELIVERY—MEANING OF—COUNTER-CLAIM FOR DAMAGES.—Where one sells goods and agrees to deliver promptly, he is supposed to have the goods on hand ready for delivery, and where there is evident delay beyond what would be reasonably expected under such a contract, the purchaser may counter-claim damages for the delay and will be entitled to such damages as he may have sustained thereby.—*Phillipps* v. *Taylor.*—Filed Jan. 26, 1886.—N.Y.

SALE—BREACH OF WARRANTY—GOODS SOLD UNDER CHATTEL MORTGAGE.—Defendant sold to plaintiff certain store fixtures, on which there was a chattel mortgage, and received payment in full of the purchase price, defendant agreeing to discharge the chattel mortgage and save plaintiff harmless therefrom. Failing to discharge the mortgage, it was foreclosed and the fixtures sold. The plaintiff subsequently by amicable arrangement, repurchased the fixtures for the sum of $1000. In an action against the defendant for a breach of warranty, it is *held* that he is entitled to recover only $700 the amouut of the mortgage, although he had to pay $1000 to recover them.—*Cahill* v. *Smith.*—Filed Feb. 2, 1886.—N. Y.

SPECIFIC LEGACY—LIABILITY OF EXECUTOR—An executor of a will whereby a certain note was given to two minors, surrendered the note to the maker and took two notes instead. He then filed his final account, but failed to cite one of the beneficiaries to

appear. Subsequently he offered the note to the mother of the minor, but she refused it. He then held the note until the minor arrived at maturity. In the meantime the maker of the note became insolvent. *Held* that the executor was liable for the amount of the note.—*Davis* v. *Crandall.*—Filed Jan. 19, 1886.—N. Y.

STOLEN PROPERTY—FALSE REPRESENTATIONS—CHECK GIVEN IN PAYMENT FOR PROPERTY WHICH WAS STOLEN—TITLE OF ENDORSEE—Where property had been stolen and the thief takes the property to an auctioneer to be sold, and in doing so assumes the name of another man, and when the property is sold the auctioneer gives his check in payment, making it to order of the name assumed by the thief, and he transfers the same to an innocent holder for value, the maker of the check cannot subsequently stop payment of the check, the holder having acquired a good title.—*Robertson* v. *Colman.*—Filed Feb. 26, 2886.—Mass.

SUBROGATION—WHEN ALLOWED.—Where a juuior incumbrancer is allowed the right of subrogation, it must be where the lien discharged rests upon the land covered by the junior incumbrance. The junior incumbrancer cannot discharge a lien on another tract of land than that on which he has a lien, and then ask that his lien be tacked on to the land from which he has caused a lien to be discharged.—*Smith* v. *Dinsmore.*—Filed Jan. 26, 1886.—Ills.

SUBSCRIPTION TO STOCK—CONDITIONED UPON SUBSCRIPTION OF A CERTAIN AMOUNT—COLORABLE SUBSCRIRTION.—Where one subscribes for stock conditioned upon a certain amount being subscribed by others, and in order to get the amount required, a subscription is obtained and a collateral agreement made that it shall in fact be for a less sum than the actual apparent subscription. *Held* that the secret agreement is void and the colorable subscription is valid. —*Cleveland Iron Co.* v. *Ennor.*—Filed Jan. 25, 1886.—Ills.

TAXATION—REDUCTION OF ASSESSMENT—ALL PARTIES TAXED ENTITLED TO PRO RATA REDUCTION.—Where an assessment of taxes levied by the commissioners, partly on individual property benefitted and partly on the city in general, and before the collection of the tax the city obtained a reduction of the assessment. *Held* that the individuals assessed should share pro rata in the reduction.—*Mayer* v. *City of New York.*—Filed Jan. 19, 1886.—N. Y.

TAXES—RECOVERY OF TAXES ILLEGALLY ASSESSED AND PAID—LIMITATION.—In an action to recover back taxes which were illegally assessed and paid, it is not necessary to aver in the pleadings that the taxes were illegally assessed. Such facts must be averred that the court may draw a conclusion therefrom as to the legality or illegality of the assessment. Where the tax is payable in installments semi-annually, the limitation of time in which an action may be brought, commences to run from the date of payment of each installment, and not from the date of last payment.—*Pelton* v. *Bemis.*—Filed Feb. 23, 1886.—Ohio.

TAX SALE—REDEMPTION—NOTICE MUST BE GIVEN BY PURCHASER.—The purchaser at a tax sale is bound to give the required statutory notice of redemption, and, failing to do so, if he receives a deed it is inoperative. He does not acquire the legal title by the deed, and redemption may still be had on equitable conditions.—*Gage* v. *Bailey.* —Filed Jan. 25, 1886.—Ills.

TAXES—FRAUDULENT ASSESSMENT—REMEDY.—Where land is assessed at an excessive valuation, the owners remedy is by application for review at the proper time, and failing in this, he cannot successfully resist the enforcement of the tax lien. If there has been a compromise agreement whereby the assessment has been reduced and a payment made under the compromise,

and subsequently the compromise has been set aside or annulled, the owner is entitled to credit to the extent of the payment he has made.—*Mix* v. *People.*—Filed Jan. 25, 1886.—Ills.

TAXES—OVERVALUATION—TAX-PAYERS REMEDY.—The valuation of property for taxation is exclusively within the discretion of the assessor, and he is not bound to accept the valuation placed upon it by the owner. The owner's remedy is to require of the assessor a copy of his valuation, and go before the town board at the proper time for review of the valuation made, and have it corrected if it be wrong.—*Humphreys* v. *Nelson.*—Filed Nov. 14, 1886.—Ills.

TENANCY AT WILL—TERMINATING THE SAME BY EXECUTING A LEASE TO ANOTHER. Where one is a tenant at will, on an oral lease, from month to month, the landlord may execute a lease of the premises to another, and the lessee may eject the tenant at will and not be liable for damages in so doing, unless the means employed in ejecting him are shown to be unlawful.—*Gronstra* v. *Bourges.*—Filed Jan. 11, 1886.—Mass.

TRIAL—INSTRUCTIONS—FINDING OF FACTS WILL NOT BE REVIEWED.—The finding of facts in the trial court, will not be reviewed on appeal. When the court has already instructed the jury on a certain point, and further instructions are asked on the same point, it is not error for the court to refuse to give such instructions.—*C. & W. I. Ry Co.* v. *Bingenheimer.*—Filed Jan. 25, 1886.—Ills.

TROVER AND CONVERSION—FRAUD ON OWNER—POSSESSION OBTAINED.—Where possession of personal property has been obtained by fraud, and the party obtaining it sells to another, the owner may maintain an action of trover and conversion against the party so purchasing the property.—*Alexander* v. *Swackhammer.*—Filed Jan. 22, 1886.—Ind.

TRUST FUND—ASSIGNMENT FOR THE BENEFIT OF CREDITORS—WHEN THE TRUST SHALL BE DECLARED CLOSED.—A firm failed in July, 1883, and made an asignment for the benefit of creditors, which provided that creditors might become parties thereto within 60 days, and it also conferred upon the trusteees the power to grant an extension of this time if they deemed it to the best interest of the creditors. The trustees did extend the time fiirst till Jan. 1884, and again by further extensions till Dec. 1885. Upon an applicalion of the creditors who had signed the compromise agreement, to have a distribution of the funds made, and to have the trust closed, it is *held* that the discretionary power of the trustees in extending the time for creditors to become parties, had not yet been exhausted.—*Nat. Union Bank* v. *Copeland.*—Filed Feb. 26, 1886.—Mass.

TRUSTEE—PURCHASE OF TRUST PROPERTY BY—WHEN HE MAY PURCHASE.—The general rule that a purchase of trust property by the trustee, may be voided by the beneficiary, is subject to exceptions. Where the trustee is a party in interest, he may obtain permission of the court to bid at the sale, and having obtained permission, he may purchase on the same footing as others.—*Schollc* v. *Scholle.*—Filed Jan. 19, 1886.—N.Y.

TRUSTEE—FOR THE PURPOSE OF OBTAINING SPECIFIC PERFORMANCE—PARTIES.—Where a bill is filed for obtaining specific performance of a contract entered into by a decedent, and it becomes necessary to appoint a trustee for the purpose, the beneficiaries under the will of the decedent, are not necessary parties to the proceeding.—*Ryan* v. *West.*—Filed Jan. 25, 1886.—Ills.

TWICE IN JEOPARDY—STATUTE INCREASING THE PENALTY FOR SECOND OFFENSE.—Where a statute provides that the penalty shall be increased for the second or third criminal offense, in cannot be construed as placing the criminal twice in jeopardy for the same offense. *Held* that such an act is constitutional. Statutes of this character have been enacted by many states on the

ground that a repetition and persisting in crime aggravating guilt.—*Kelley* v. *People.* —Filed Jan. 25, 1886.—Ills.

VENDOR AND VENDEE——CONVEYANCE PENDANTE LITE—RIGHT OF GRANTEE TO DEFEND.—Where conveyance of property is made *prudente lite*, the grantee may defend in the name of his grantor, and the latter cannot dismiss the suit or interfere with the defense.—*Rozell* v. *Rozell.*—Filed Jan. 23, 1886.—Ind.

VENDOR AND VENDEE—WAIVER OF VENDOR'S LIEN—TAKING OTHER SECURITY.—A vendor of land who takes other security for the purchase money thereby looses his lien upon the land sold for the same, and must rely upon the security taken. But where the purchaser agrees to convey other lands as a consideration in exchange such agreement to convey is not security and the seller may have a lien on the land he sold in default of the conveyance of other land to him as agreed.—*Beal* v. *Harrington.*—Filed Jan. 25, 1886.—Ills.

VERDICT AGVINST EVIDENCE—NEW TRIAL —ADMISSION OF INCOMPETENT EVIDENCE— WAIVER OF OBJECTION.—One who seeks to reverse a judgment on the ground that it is against the evidence, must make a motion in the trial court to that effect, and if the motion be overuled take exception to the ruling. Otherwise it cannot be made a part of the record in the bill of exceptions. If evidence be admitted which is incompetent and no exception be taken at the time to its admission, it cannot be considered on appeal. Where the opposite party cross-examines in reference to such incompetent evidence and introduces other evidence in explanation of it he waives the right to any objection to its admission.—*Graham* v. *People.*—Filed Jan. 25, 1886.—Ills.

VENUE—CHANGE OF—TWO DEFENDANTS JOINTLY INDICTED, AND MOTION FOR CHANGE BY ONE—EFFECT OF.—Where two defendanrs are jointly indicted for a crime, and one of them moves for a change of venue, it operates as a severance, and it is immaterial whether the other defendant is present when such motion is made or not. It is not error to permit the jury to view the premises where a homicide has been committed without the defendant being present with them.—Filed Feb. 9, 1886.—Ind.

WATER-RIGHTS—ERECTING A FLOATING BOAT-HOUSE IN FRONT OF A LOT—AUTHORITY OF A CITY OVER WHARFS.—The city of Detroit has control of land between the channel and wharf line, and may lease it for proper purposes. The adjoining lot owners have no more interest or rights in this wharf than the public. One who obtains a license from the city to erect a boat-house on the wharf can not be held in contempt for not obeying an order of court to remove his boat-house so erected under a license from the city. Where the owner of a stationary boat-house thus erected, was ordered by court to remove the same, and remove it, but constructed a floating boat-house and anchors it in substantially the same place, he can not be held in contempt on the order to remove the former, even though the order was well founded.—*Scott* v. *City of Detroit.*—Filed Jan. 15, 1886.—Mich.

WHARF-BOAT—LANDING AT—GENERAL VERDICT AND ANSWER TO SPECIAL INTERROGATORIES.—Where there is a wharf-boat at which steamers are accustomed to land, the landing at the wharf-boat is equivalent to landing at the wharf. Where a general verdict is returned by a jury and with it answers to special interrogatories, which answers are inconsistent with each other, the general verdict must govern.—*Davis v. Reamer.*—Filed Feb. 10, 1886.—Ind.

WILL—CONTEST OF—BURDEN OF PROOF —BILL OF EXCEPTIONS SIGNED BY ONE JUDGE ONLY.—In coutesting a will the burden of proof is on the party attacking its validity, and on failure of the contestant to affirmatively establish the fact of incapacity

or other fact which renders the will invalid, it is not error for the court to instruct the jury to return a verdict sustaining the will. A bill of exceptions stgned only by one of the judges of the district court, although otherwise regular, and although the record recites that a bill of exceptions was allowed, will not be considered a part of the record. —*Wagner* v. *Zeigler.*—Filed Feb. 23, 1886.—Ohio.

WILL—PROVISION IN CONFLICT WITH THE LAW.—The statute provides that when a *covert* is filed against the probate of a will, the costs shall be paid out of the estate. Where a testator provides in his will that any of his heirs who file a *covert* shall pay the costs of the same, the provisions of the will must give way to the law and will be inoperative.—*Hoyt* v. *Hoyt.*—Filed Jan. 29, 1886.—N. J.

WILL—AGREEMENT BETWEEN HUSBAND AND WIFE RELINQUISHING HUSBAND'S RIGHTS IN WIFE'S PROPERTY.—In a will by a married woman it is not necessary that it be expressly stated that the testamentary provision shall take the place of provisions made by law; tnat intention is sufficiently manifested by the will. An agreement by the husband with his wife, to accept a certain interest in her lands, as a life estate, in lieu of all rights which he may have in the property after her death, is founded on a good and sufficient consideration.—*Wright, Adm'r* v. *Jones.*—Filed Jan. 19, 1886.—Ind.

WILL—TWO WITNESSES NECESSARY—PROBATE.—A will, other than noncupative wills, must have two attesting witnesses or it will not be admitted to probate. The statute of wills does not take away any right or power to pispose of property by will, but it regulates the manner of such disposition.—*In Re Estate of McCabe.*—Filed Feb. 12, 1886.—Cal.

WILL—CHILDREN AFTERWARDS BORN—ABATEMENT OF WILL.—Where no provision is made in a will for children afterwards born, the subsequent birth of a child will abate the will, but where provision is made for children which may yet be born, the will will stand. Where a wife having property in her own right devised all her property to her husband for life and the remainder over to her children, if there be any yet born to her. *Held* that in such case the will does not abate.—*Osborn* v. *Jefferson Nat. Bank.* Filed Jan. 25, 1886.—Ills.

WILL—DEVISE OF FARM—WIDOW TO HAVE ONE-THIRD OF CROPS DURING LIFE—Where a testator devised his farm to his son on condition that the widow should have one-third of the products of the farm during her life, it is held a charge upon the land to the extent of her rights. Where the widow subsequently agrees with the son to accept a portion less than her share under the will, such agreement is not binding upon her.—*Springer's Appeal.*—Filed Jan. 4, 1886.—Penn.

WILL—ELECTION TO TAKE UNDER THE WILL WAIVES OTHER RIGHTS INCONSISTENT THEREWITH.—If a testator has by will made disposition of property not his own, and has made the person to whom the property belongs a beneficiaay under the will, such person cannot take under the will, and yet hold his property so disposed of under the will. —*Woolley* v. *Schrader.*—Filed Jan. 25, 1886.—Ills.

WITNESS—TESTIMONY TENDING TO SHOW BIAS—PROCEEDING BY INFORMATION.—In a criminal prosecution, on cross-examination, a witness should be required to answer questions which may show that he is prejudiced against the accused, and a refusal to allow him to answer such questions is error, unless such refusal can be shown not to work any prejudice to the defendant. Where no depositions are returned by the committing magistrate, the district attorney must file an information for the offense charged. *Peopte* v. *Lee ah Chuck.*—Filed Apr. 29, 1885.—Cal.

Dryden v. *Newman.*
Filed Jan. 25, 886.—Ills.

[In order to establish a perfect title, by one who shows color of title by possession and payment of taxes, the color of title must be co-extensive with the claim of title]

Lake v. *Brown.*
Filed Jan. 25, 1886.—Ills.

[One who seeks relief against usury under a trust deed, must make his claim for such relief before sale of the property under the trust deed, or it will be too late.]

Tingre v. *Port Chester.*
Filed Jan. 19, 1886.—N. Y.

[Question of assessments for paving street in Port Chester. Constitutionality of Chap. 277, Laws of 1878 determined·)

Welsh v. *Wilson.*

(A merchant has a right to place skids across the sidewalk temporarily, to remove goods from a wagon to a warehouse.]

Whig v. *W. C. Fire Ins. Co.*
Filed Feb. 9, 1886.—N. Y.

(Where in the settlement of a loss by fire the insurance company neglect or refuse to go on with an arbitration agreed upon, and some of the debris of burned building is subsequntly removed by city authorities, the company will be held to have waived their right to arbitration.)

Larmon v. *Crown Point Iron Co.*
Filed Feb. 9, 1886.—N. Y.

[The owner of premises is not liable for injuriy to one who goes upon his premises for the purpose of seeking employment, although the injury arises from defective machinery on the premises.]

Hexamer v. *Webb.*
Filed Feb. 9, 1886.—N. Y.

(An owner of premises is not liable for injury caused through the negligence of a contractor who is building a house. The contractor is not an employe.]

County Treasurer v. *Knoedler.*
Filed Nov. 24, 1885.—Conn.

(Where one is convicted of a violation of the statute in the sale of intoxicating liquors, and he is not sentenced because of his flight, an action may be maintained on his bond.)

Lee's Appeal.
Filed Feb. 13, 1886.—Conn.

(Where a son serves his father under an agreement that his father shall pay him such compensation as he thinks just, and the father does pay him in good faith what he thinks his due, it extinguishes the son's claim)

Long v. *Millerton Iron Co,*
Filed Jan. 26, 1886.—N. Y.

(Where the terms of a contract are not susceptible of ambiguous interpretation, it canuot be varied by parol evidence.)

Stewart v. *Marvel.*
Filed Feb. 9, 1886.—N. Y.

(Where one agrees to deliver manufactured goods "as fast as they may be produced" in his factory, he is bound to run his factory in the ordinary way, to the extent of his bapacity to produce the goods.)

Canterbury v. *City of Boston.*
Filed Feb. 26, 1886.—Mass.

(In an action for personal injury from defect in a sidewalk, it is not absolutely essential that in the notice given it be stated that the defect was the cause of the injury.)

Reed v. *McConnell.*
Filed Jan. 19, 1886.—N. Y.

(A witness can only state facts, not his opinion. It is error to allow a witness to state what would be the value of a certain contract on certain conditions named.)

*Spiritual Atheneum Society.*v. *Randolph.*
Filed Feb. 26, 1886.—Md.

(*Mandamus* will not be granted to compel a publc officer to co an act bevond his control.)

Harris, Adm'r v. *Taylor.*

Filed Nov. 13, 1885.—Conn.

(A claim against a decedent's estate cannot be set-off against a claim for rent due under a lease by an executor.)

Commonwealth v. *Wadendorf.*

Filed Feb. 26, 1886.—Mass.

(Where a saloon-keeper gives orders to his employes in good faith, not to sell liquor between 11 p. m. and 6 a. m. and the employe in violation of his instructions does sell, the saloon-keeper cannot be held guilty of the offense.)

Post v. *City of Boston.*

Filed Feb. 25, 1886.—Mass.

(In an action for personal injury received by defect in a highway, it is a question for the jury whether plaintiff used due dilligence and care or not.)

Commonwealth v. *Roy.*

Filed Jan. 7, 1886.—Mass.

(A city council may impose a penalty for driving faster than a certain speed on the streets, but having fixed the limit of speed at which persons may drive, cannot impose a fine for immoderate driving, if it be within the speed prescribed.)

Hill v. *Easthampton.*

Filed Jan. 25, 1886.—Mass.

(By public statute Chap. 27, Sec. 11, towns may spend certain moneys for the purpose of celebrating the centennial anniversary of their incorporation.)

Montgomery County v. *Courtney.*

Filled Feb. 12, 1886.—Ind.

(Where an attorney is appointed by the court to defend a poor person, the county is liable for his services. If a change of venue has been taken and the trial had in another county, the county where the action commenced is liable.)

Cowley v. *McLaughlin.*

Filed Feb. 25, 1886.—Mass.

(When a title is shown by the records, an attachment is notice to a purchaser, but if the title is not of record, the creditor cannot claim the benefit of a fiction.)

Commonwealth v. *Magee.*

Filed Feb. 23, 1886.—Mass.

(On a complaint charging defendant with selling beer containing more alcohol than the law allows, it is a question for the jury ro determine whether the chemist who analyzed the beer made a proper analysis or not)

Rose v. *Shaukland.*

Fied Jan 25, 1886.—Ills.

(Where a conveyance is made in pursuance of a decree of court, and it subsequently appears that such decree and conveyance were made upon a mistake, the decree must be corrected before the conveyance can be changed.)

State v. *Soudriette.*

Filed Feb. 10, 1886.—Ind.

(A forfeited recognizance may be recovered by the state, although the clerk by mistake, made the bond to the city, instead of to the state.)

Heath v. *State.*

Filed Feb. 16, 1886.—Ind.

(One purchasing premises where liquor is sold, cannot continue to sell under the license held by the vendor of the premises.)

Uneerwood v. *Boston Savings Bank.*

Filed March 1, 1886—Mass.

(Where a decedent, in her lifetime, assigned her bank-book and money in bank to a trustee to be held for her use, after her death, her executor is entitled to the funds.)

Law v. *Seipp, Collector.*

Filed Jan. 25, 1886.—Ills.

(Where property is sold for taxes, and there are prior back taxes not included, the property cannot be resold for the taxes not included. The sale is an abandonment of all back taxes.)

Commonwealth v. *Hogarty.*

Filed Feb. 23, 1886.—Mass.

(An indictment charging one with being present at a gambling game, when in fact he was engaged as a party in playing the game, is good.)

Adams v. *Young.*

Filed Feb. 23, 1886.—Ohio.

(Where sparks from a smoke stack of a manufacturing establishment set adjacent buildings on fire, in an action for damages the question as to whether the negligence of the mill owner was the proximate cause of the damage, is a question for the jury.)

Pray v. *Stebbins.*

Filed Feb 26, 1886.—Mass.

(Where a tenant is in possession of premisrs as a licensee of the wife with the consent of the husband, as a tenant at will, and the premises are owned jointly by the husband and wife, a written lease by the husband to a third party, terminates such tenancy at will.)

Hayes v. *Di Vito.*

Filed Feb. 26. 1886.—Mass.

(One having a right of way over adjoining premises, as an easment, has a right to break open gates which may be constructed, obstructing his right of way.)

Culbertson v. *Kinevan.*

Filed Jan. 29, 1886.—Cal.

(A justice of the peace has no jurisdiction in a question as to the legality of a toll.)

State v. *McCarty.*

Filed Feb. 2, 1886.—Wis.

(County clerk failing to qualify within 20 days after notice of appointment, causes a vacancy tn the office. The county board may remove the county clerk for refusal to sign orders as directed by the board.)

Redwood City v. *Grippersteiu.*

Filed Jan. 30, 1886.—Cal.

(The marshall of Redwood City is constituted *Ex Officio* tax collector, and the sureties on the bond of the marshall, are liable for a defalcation in the collection of taxes.)

Hildreth v. *City of Troy.*

Filed Jan. 19, 1886.—N.Y.

(A citizen of Troy is a competent juror, in a case against the city.)

Stone v. *Attleborough.*

Filed Oct. 1885 —Mass.

(A city is not liable for injuries received by reason of a defective sidewalk or way beyond the limits where it is bound to keep the ways in repair.)

Hazard v. *Robinson.*

Filed Jan. 1886.—R. I.

(Any one having an interest in property sold under foreclosure of a chattel mortgage, and would be a loser thereby, is a necessary party to a bill to redeem.)

Miller v. *Miller.*

Filed Jan. 26, 1886.—N. J.

(A petition for divorce may be amended at any time before final decree, if necessary in order to settle all the rights of the parties.)

Miller v. *Sherry.*

Filed Feb. 2, 1886.—Wis.

(No question of law decided—question of fact as to which party was at fault.)

Colwell v. *Britten.*

Filed Jan. 27, 1886.—Mich.

(Merely sharing in the profits of a business, does not constitute the recipient a partner and make htm liable as such, unless he has been held out as a partner to those who have given the partnership credit.)

State v. *Meeker.*

Filed Jan. 19, 1886.—Neb.

(Public records are free to the examination of any one interested. The fee-book of the clerk of the district court is a public record.)

Kidd v. *Doherty.*

Filed Jan. 20, 1886,—Mich.

(Process issued by a justice of the peace

and dilivered to a constable for service, should be held by him until expiration of time for service is up, and service should be made by him if possible within the time.)

Merchants' Nat. Bank v. *Sherman.*
Filed Jan. 19, 1886.—N. Y.

(An order for the examination of a party against whom it is proposed to bring an action, may be granted by the court at its discretion.)

Oneida Co. Bank v. *Henderson.*
Filed Jan. 19, 1886.—N.Y.

(An action pending in the United States courts, is no bar to an action in the state courts for the same cause of action.)

N. Y. C. & St. L. Ry Co. v. *Doane.*
Filed Jan. 22, 1886.—Ind.

(Where jndgment is entered on a verdict and on the same day a motion for a new trial is filed, the judgment is not final, until the motion is disposed of.)

Frank v. *Grimes.*
Filed Jan. 22, 1886.—Ind.

(When a jury render a general verdict and also special findings, if the latter are inconsistent with the former, judgment should be rendered on the special findings.)

Kaiser v. *Cox.*
Filed Jan. 22, 1886.—Ills.

(The pecuniary limit of $1000 which renders the decision of the appellate court final, has reference to the amount of the claim when the suit is brought. Interest accruing afterwards does not affect the result.)

Peyton v. *Peyton.*
Filed Feb. 4, 1886.—Kans.

(Certifying a case to the district court for trial, by a justice of the peace, on the ground that the title to land is in dispute, is not a final order, and is subject to review upon error.)

Wilcox S. P. Co. v. *Schimmel.*
Filed Feb. 3, 1886.—Mich.

(Where an injunction is issued, restraining parties from foreclosing and selling property under chattel mortgage, the holder of the mortgage proceeding to sell the property, is guilty of contempt.)

Miner v. *Lorman.*
Filed Feb. 3, 1886.—Mich.

(The payment of money on an account, without any promise to pay the balance, will keep the claim alive, and the statute will commence to run from the date of the last payment.)

Hasley v. *Scott.*
Filed Jan. 27, 1886.—Mich.

(A husband having sold property for his wife, as her agent, the purchaser cannot be garnisheed as the creditor of the husband.)

Parsons v. *Clarke.*
Filed Jan. 27, 1886.—Mich.

(Partial payment on a debt by an assignee, does not bar the running of the statute of limitations.)

Toms v. *Boyer.*
Filed Jan. 27, 1886.—Mich.

(Upon foreclosure of a mortgage for purchase money, where the title was defective at date of sale and mortgage, interest will be computed from the time the vendee was invested with perfect title, and not from date of the mortgage.)

Young's Appeal.

(An action for services against the estate of a decedent, cannot be maintained, unless an express promise of decedent to pay is shown.)

Rix v. *Strautz.*
Filed Jan. 27, 1886.—Mich.

(Interest on a note payable in installments may be computed on the defaulted installments at the rate agreed upon)

Kundiger v. *City of Saginaw.*
Filed Jan. 17, 1886.—Mich.

(The owners of property in a city affected by the opening of a street, are entitled to personal service of notice, and in the ab-

sence of such notice the proceedings are void.)

Boggencamp v. *Seeley.*
Filed Feb. 10, 1886.—Neb.

(In a trial to the court, the finding on a question of fact is entitled to the same consideration on appeal, as if found by a jury.)

State v. *Boswell.*
(Filed Jan. 29, 1886.—Ind.

(It is error to proceed by information against a defendant at a term at which he has been bound to appear, after the grand jury has been discharged without finding an indictment against him.)

Hoffman v. *Butler.*
Filed Feb. 16, 1886.—Ind.

(One who endorses a note at the request of one of two makers of the note, may be subrogated to the rrghts of the holder.)

Harper's Appeal.
Filed Jan. 4, 1886.—Pa.

(Where a testator bequeathes a legacy to a trustee, in consideration of his services as trustee, it is valid and entitled to priority of payment.)

Beard v. *Pratt.*
Filed Jan. 25, 1886.—Ind.

(A wife who advances money to her husband to enable him to prosecute an action at law and after judgment receives an assignment of the judgment so obtained, holds it prior to other creditors.)

Burke, Adm'r v. *Grant.*
Filed Jan. 25, 1886.—Ills.

[An action to remove a cloud from title by compelling the discharge of a mortgage which the mortgagee had agreed to cischarge]

Ralston v. *Moore.*
Filed Jan. 28, 1886.—Ind.

[Upon the death of one of two joint debtors, the creditor may proceed against the survivor, or against the estate of the decedent at his election.]

THE IRON HEART.

Encased in every human frame is a wonderful machine, or force pump, which drives the blood through the arteries to all parts of the body, from whence it is returned to the machine through the veins. This machine is the heart, and together with the arteries, veins and capillaries, constitutes the medium through which circulation is maintained in the system.

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The Chicago Law Journal.

CHICAGO, MAY, 1886.

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ACQUIREMENT OF RESIDENCE—WHEN A QUESTION FOR JURY—WRONGFUL ASSESSMENT OF TAXES.—Where the question of one's residence is in issue and the evidence leaves the question in doubt, it is properly submitted to a jury. Where an action is brought for the recovery of taxes wrongfully assessed and paid, it appearing to the court that the assessment was illegal, the court may continue the case long enough to allow another assessment to be made.—*Johnston* v. *City of Oshkosh.*—Filed March 16, 1886.—Wis.

ADMINISTRATOR—OBTAINING AN ORDER OF FINAL SETTLEMENT FRAUDULENTLY.—Where an administrator fraudulently obtains an order of final settlement, the county court may vacate such order upon obtaining notice of the fraud, may require such administrator to again render his account, and a redistribuiion may be made.—*In Re Estate of Leavins.*—Filed March 16, 1886.—Wis.

ADULTERY—INDICTMENT FOR—DISMISSAL OF ACTION UPON MOTION OF DEFENDANT AND AFFIDAVIT THAT THE ACTION WAS COMMENCED UNDER DURESS.—It is not necessary that in an indictment for adultery it should be set out that the indictment was found at the instance of the husband or wife, and because it is alleged that the act of adultery was committed at several different times and places, does not render it demurrable on the ground of charging more than one offense. Such action can not be dismissed on motion of defendant supported by an affidavit that plaintiff commenced the action under duress.—*State* v. *Briggs.*—Filed March 19, 1886.—Iowa.

AGENT—ADMISSIONS OF—APPLICATION OF FACTS.—Where a horse driven by an agent ran away, and the horse and wagon was injured, the runaway and accident constitute the *res gestæ* and admissions and declarations of the agent relative to the accident may be admitted as part of the *res gestæ.*—*Edmonds* v. *Curtis.*—Filed Jan. 29, 1886.—Colo.

AGENT FOR SALE OF REAL ESTATE—WHEN COMMISSIONS ARE EARNED.—When an agent has been employed to procure a purchaser for real estate, and having procured such purchaser, who is able, ready, and willing to make the purchase on the terms offered, the agent is entitled to his commission, even though the owner refuse to convey the property as it was agreed.—*Hamlin* v. *Schulte.*—Filed March 1, 1886.—Minn.

AMENDMENT AFTER FINAL JUDGMENT—PENDING APPEAL.—Where a demurrer is interposed to a complaint and sustained, and the plaintiff refuses to amend but takes an appeal, the judgment of the lower court being affirmed, it is too late for plaintiff to amend his complaint. During the pendancy of an appeal, no amendment of the pleadings can be made in the trial court.—*Kirby*

v. *Superior Court.*—Filed Feb. 25, 1886.—Cal.

APPEAL—QUESTIONS OF FACT—TENANT HOLDING OVER AFTER NOTICE TO QUIT OR PAY RENT.—The supreme court will not review a question of fact coming to it from the appellate court, but will review the evidence, bearing upon instructions given to the jury; a party who continues to occupy premises after notice to quit or pay rent is bound to pay rent therefor.—*I. C. Ry. Co.* v. *Thompson.*—Filed Jany. 25, 1889.—Ill.

APPEAL—FINDING OF FACTS—PRINCIPAL AND AGENT.—The findings of a court on a question of fact will not be disturbed on appeal unless clearly wrong. An agent who has authority to carry on a lumber business for his principal, including the right to file a mechanic's lien, will be held to have the power to waive the right to file a mechanic's lien.—*White Lake Lumber Co.* v. *Stone.*—Filed March 24, 1886.—Neb.

APPEAL—WHEN IT MAY BE TAKEN TO THE SUPREME COURT AND WHEN TO THE APPELLATE COURT.—When a bill was filed seeking to restrain a board of education from maintaining a school: (1) from renting a building in which to hold school; (2) from holding the school in a place not authorized by a vote of the district; and (3) because the board was maintaining a sectarian school, a demurrer was interposed and sustained and the bill dismissed. The plaintiff appeals directly to the supreme court. *Held*, dismissing the appeal, that the appeal should have gone to the appellate court; that the supreme court has no jurisdiction.—*Millard* v. *B'd of Ed'n*—Filed Jan. 25, 1886.—Ill.

APPEAL—AMOUNT OF JUDGMENT—SUFFICIENCY OF JUDGE'S CERTIFICATE.—Where the amouut in controversy does not exceed $100 exclusive of costs, the supreme court has no jurisdiction, unless the trial judge certifies a question of law to be determined. A cetificate which merely states that there is a question of law involved, but does not state what the question is, is insufficient.—*Bradenberger* v. *Regler.*—Filed March 17, 1886.—Ia.

APPEAL—FINDING OF APPELLATE COURT FINAL—JOINT OBLIGATION.—The finding of the appellate court on a question of fact cannot be aeviewed by the supreme court. All joint obligations and covenants shall be taken and held to be joint and several obligations and covenants.—*Tully* v. *Excelsior Iron Works.*—Filed Jan. 25, 1886.—Ill.

APPEAL—JURISDICTION—ASSESSMENT OF BANK SHARES—PLEADINGS.—This court has no jurisdiction where the amount in controversey is less than $100 in the absence of a certified question of law involved. The pleadings must show that the amount is less than $100. Bank shares may be assessed to the owners thereof, and the owner having appeared before the board of equalization in opposition of the assessment, cannot plead want of notice.—*Henkle, et al* v. *Town of Keota.*—Filed March 18, 1886.—Ia.

APPEAL—RULE AS TO THE ORDER OF PRESENTINC ARGUMENTS BY COUNSEL.—On appeal the order of argument by counsel remains the same as in the trial court without regard to which party is the appellant. The plaintiff in an equity case makes the opening argument. The appellant must file an argument on the merits, or the case will be dismissed.—*Devore* v. *Adams.*—Filed March 19, 1886.—Ia.

APPEAL—ORDER TO PERFECT JUDGMENT—JUDGMENT ENTERED BEFORE THE EXPIRATION OF TIME ALLOWED.—A defendant is allowed sixty days after verdict to perfect judgment. Judgment entered at the instance of plaintiff before the expiration of sixty days, is unauthorized and not appealable. The appeal being premature it will be dismissed.—*Haye, Administrator* v. *C. & N. W. Ry Co.*—Filed Feb. 2, 1886.—Wis.

APPELLATE COURT'S FINDING OF FACT—PROMISSORY NOTE—ALTERATION.—Where

a promissory note is signed by two parties and the place of payment left blank, and subsequently with the consent of one of the makers, the place of payment is filled in, such change is not a material alteration and does not affect the validity of the note. The finding of the appellate court on a question of fact, is final and will not be reviewed.—*Canon* v. *Grigsby.*—Filed Jan. 25, 1886.—Ill.

ASSAUIT—INTENT TO COMMIT RAPE—INTENTION MUST BE SHOWN.—In an action for an assault with intent to commit rape, the purpose of defendant to commit the crime by whatever force is necessary, must be shown in order to convict.—*State* v. *Canada.*—Filed March 19, 1886.—Ia.

ASSIGNMENT—CERTIFICATE OF ACKNOWLEDGEMENT—SUFFICIENCY OF.—Where an insolvent debtor made an assignment for the benefit of creditors, and in acknowledgment of the same the notary public certifies as follows: "On the twenty-first day of February, 1882, before me personally appeared ———— to me personally known to be the individuals described, and who executed the *same* and who acknowledged to me that they executed the same for the purpose therein mentioned," *Held*, although ambiguous it is sufficient, and the assignment is valid.—*Smith* v. *Boyd.*—Filed March 2, 1886.—N.Y.

ASSIGNMENT OF ERROR—NOT INCLUDED IN RECORD—EVIDENCE.—Where an action wes commenced and a demurrer interposed to the complaint, and the ruling on the demurrer was excepted to, the case was subsequently dismmissed, a settlement having been agreed upon. The defendant having failed to perform the agreement of settlement, another action was commenced in another court for the same cause. After judgment an appeal was taken and *inter allia* the exception to the ruling on the ddmurrer was relied upon. As that exception was taken in the court where the case was first commenced, it did not appear in the record and could not be considered.—*Smith* v. *Smith.*—Filed March 3, 1886.—Ind.

ATTACHMENT—PERSONAL PROPERTY UNDER CHATTEL MORTGAGE—MORTGAGEE SUMMONED AS TRUSTEE.—Personal property subject to the lien of a chattel mortgage may be attached as though there was no lien upon it, and the mortgagee may be summoned as trustee. If the attaching creditor pays the mortgage lien, the property may be taken on execution and sold.—*Loomis* v. *Lewis.*—Filed Oct. 24, 1886.—Mass.

ATTACHMENT—INTENT TO DEFRAUD—QUESTION OF LAW—EVIDENCE.——Where the affidavit on which an attachment issues, alleging that defendant disposed of his property to defraud his creditors, is traversed, the question of intent on the part of defendant is a question for the court, and the intention of the party who purchased the property of the defendant is not of the issue. The finding of the trial court in such case will not be reversed on appeal, unless the evidence is very clear and conclusive.—*Miller* v. *McNair.*—Filed March 16, 1886.—Wis.

ATTORNEY'S FEES—FORECLOSURE—AFFIDAVITS REQUIRED.—Where a contract to convey land has been made and in it is a provision for attorney's fees in case of foreclosure, such fee cannot be recovered unless the attorney files his affidavit at the time of commencing the action, as reqnired by the act of 1880.—*Sweeney* v. *Davidsou.*—Filed March 19, 1886.—Ia.

BANK CHECK—WHEN STATUTE OF LIMITATIONS BEGINS TO RUN AGAINST ENDORSEE.—The statute of limitations commences to run as against the endorsee or holder of a check on a bank from the time of its presentation and refusal of the bank to pay. The right of action against the maker is then complete.—*Vieto* v. *Union Nat. Bank.*—Filed March 16, 1886.—N.Y.

BILL OF EXCHANGE—ACCEPTED BY AN EXECUTOR—PERSONAL LIABILITY.—Where

an administrator or executor makes or accepts negotiable paper, he will be held personally liable on the same, although he adds to his own name the name of his office. Because a special fund is mentioned out of which a draft is payable does not take away from it the character of commercial paper. *Schmittler* v. *Simon.*—Filed March 9, 1886. —N.Y.

BREACH OF PROMISE OF MARRIAGE—ACTION FOR—TESTIMONY OF PLAINTIFF.—In an action for breach of promise of marriage and seduction, the plaintiff cannot show that she suffered a miscarriage. To submit such evidence and for the jury to allow additional damages in consequence, is error. A verdict in such case rendered on plaintiff's uncorroberated testimony, cannot be set aside on that ground.—*Giese* v. *Schultz.*—Filed March 16, 1886.—Wis.

CARRIER OF PASSENGERS—REFUSAL TO PAY FARE, AND OFFER TO PAY AT THE LAST MOMENT IN BEING EJECTED.—A passenger who, not having a ticket, refuses to pay his fare on a railroad train, and persists in his refusal until the conductor has forced him to leave the train, and at the moment he is being landed on the ground from the car, he offers to pay and it is refused, the company is not liable for damages for ejecting him.—*Pease* v. *D. L. & W. Ry Co.*—Filed Feb. 9, 1886.—N. Y.

CITY LICENSE OF OCCUPATIONS—MAY LICENSE A LAUNDRY ACCORDING TO THE NUMBER OF PERSONS EMPLOYED.—A City which by its charter is authorized to license occupations, may provide that laundries shall be licensed and shall pay according to the number of persons employed therein.—*Ex. Parte Le Protti.*—Filed Feb. 26, 1886.—Cal.

COMMON CARRIER—IMPLIED CONTRACT—ACTION FOR LOSS OF LIVE STOCK.—Where a party shipping live stock, loaded a car in part at one station and took a receipt for the stock thus loaded, and at his request the station-agent instructed the conductor of the train to stop at another way station and take on additional stock for the same party, in an action for the loss of some of the stock, it is competent for the shipper to prove what number of stock was loaded at the way station, and although he never received a bill of lading for the same, there is an implied contract on the part of the company to deliver the stock at the destination to which they are consigned.—*Aiken* v. *C.B.&Q.Ry Co.*—Filed Mch 18, 1886.—Ia.

COMMON CARRIER—LOSS OF GOODS—EVIDENCE ESTABLISHING THE VALUE.—In an action to recover for the value of jewels lost by a common carrier, it is competent to allow the plaintiff to select jewels which in his judgment correspond in value to those lost, and exhibit the same to the jury, and then to call upon an expert to testify as to the value of the jewels thus exhibited to the jury.—*Berney* v. *Dinsmore.*—Filed Jan. 12, 1886.—Mass.

CONTEMPT OF COURT—INHERENT POWER OF COURT TO PUNISH FOR—LEGISLATURE CANNOT ABRIDGE THIS POWER.—Disorderly conduct or a disobedience of its orders *in facie curiæ*, constitute a direct contempt. Every court of general jurisdiction has inherent power to punish for contempt, and this power cannot be abridged by the legislature.—*Holman* v. *State*,—Filed March 5, 1886.—Ind.

CONTINUANCE—ENGAGEMENT OF COUNSEL—DISCRETION OF COURT.—The granting of a motion for continuance of a case on the ground that counsel are engaged in another court, rests in the sound discretion of the court. Where such a motion is made and refused and it appears that the counsel was engaged in attending the call in another court. *Held* that such refusal was not an abuse of the discretionary power of the court.—*Culver* v. *Colehour*—Filed Jan. 25, 1886.—Ill.

CONSOLIDATION OF CAUSES—CHANGE OF VENUE—TERMINATION OF LEASE,—Where

an action was brought by a lessor against his lessee in a justice's court, for one months rent, and defendant appealed to the circuit court, and the lessor subsequently brought an action in the circuit court for three months additional rent. *Held* that the causes were properly eonsolidated by consent of the parties, and a change of venue granted to the district court.—*Broune* v. *Hickie.*—Filed March 17, 1886.—Ia.

CONSTITUTIONAL LAW—SUBJECT MUST BE EXPRESSED IN THE TITLE OF THE ACT.—Where the subject of the enactment is not expressed in the title of an act, it is unconstitutional and void. Section 2 chaprer 116 laws of 1685 *held* unconstitutional in so far as it relates the detaching of territory from an unorganized county because the subject is not expressed in the title.—*In Re Petition of Wood.*—Filed Feb. 4, 1886.—Kans.

CONTRACT—DELAY BY EMPLOYER—DAMAGES.—Where one has contracted to perform certain work, and he is delayed by the failure of the employer to perform certain preliminary work, he is entitled to and may recover damages for the delay. The measure of such damages is the actual expense incurred by the delay.—*L. & N. Ry Co.* v. *Hollenbach.*—Filed Feb. 18, 1886.—Ind.

CONTRACT—MADE BY AN AGENT—PRESUMPTION OF AUTHORITY.—Where plaintiffs wrote a letter to the defendant firm which together with the answer thereto constituted a contract, and the letter was answered by a salesman in defendant's employ, the letters being put in evidence and a verdict rendered for plaintiff on the contract. *Held* that it was a reasonable presumption that the letter had been answered by the authority of defendants, and that it was binding on them. —*Thomas* v. *Wells.*—Filed Jan. 9, 1886.—Mass.

CONTRACT—AGREEMENT TO CONVEY—ASSIGNMENT OF.—Where one entered into a contract to purchase land and to take a deed within sixty days, and subsequently sold and transferred his contract to another for the sum of $425, and the latter never takes the deed, *Held* that the latter is liable for the amount he agreed to pay for the assignment of the contract, although he failed to avail himself of its benefits.—*Hussen* v. *Coppenheim.*—Filed March 2, 1886.—N.Y.

CONTRACT——FRAUDULENT INTENT.—In an action to enforce a contract where goods were sold and where there was a manifest intention on the part of both parties to the contract to defraud third parties, it is *held* that the court would not aid either party in enforcing the contract.—*Materne* v. *Horwitz.*—Filed March 2, 1886.—N.Y.

CONTRACT—SPECIFIC PERFORMANCE—EVIDENCE.—In a contract to convey land specific performance will not be decreed unless the complainant shows clearly a substantial performance on his part.—*Weingaertner* v. *Pabst.*—Filed Jan. 25, 1886.—Ill.

CONTRACT BY COUNTY COURT—RAILWAY STATION—CHARTER OF ROAD FROM ONE TOWN TO ANOTHER.—Wbere a railway company obtains a charter to build a road from one town to another, such charter is sufficiently complied with by extending the road from the boundaries of one town to the boundaries of the other. The authority conferred upon the county court to enter into a contract for the maintenance of a railway station, does not carry with it the power to rescind, modify or release such contract.—*People* v. *L.&N. Ry Co.*—Filed Jan. 25, 1886.—Ill.

CORPORATIONS—INSOLVENT——JUDICIAL SALE VOID—RIGHTS OF THE PURCHASER.—Where the assetts of an insolvent corporation are sold at judicial sale and the sale subsequently declared void, the purchaser at judicial sale who has paid money for the property, may be subrogated to the rights of the creditors of the corporation.—*St. L. S.C.&M. Co.*, v. *S.C.&M.Co.*—Filed Jan. 25, 1886.—Ill.

CORPORATIONS——SIGNING ARTICLES OF ASSOCIATION—LIABILITY OF SIGNERS.—One who signs articles of association in the formation of a corporation, agreeing to pay for a certain amount of stock in such installments as the directors may call for from time to time, enters into a complete contract, and the six years limitation does not apply thereto.—*F. & L. T. Co.* v. *Shawhan.*—Filed March 2, 1886.—Ind.

CORPORATION—CONSTRUCTION NOTICE—PROMISSORY NOTE——POSSESSION AS EVIDENCE OF TITLE—A bank discounting a promissory note cannot be held to have had notice of any infirmity of the note, unless some officer or agent of the bank has actual or construction notice thereof. The mere possession of a promissory note properly endorsed, is *prima facie* evidence of ownership of ths same.—*Mann* v. *Second Nat. Bk* —Filed March 5, 1886.—Kans.

CORPORATION—DRAFT ON A BANK—MONEY PAID BY MISTAKE MAY BE RECOVERED.—Where the manager of a corporation presented to a bank a check for $300, and the bank by mistake paid $800 on the same, and the corporation afterwards refused to refund the mony paid by mistake, an action will lie for its recovery, where the party receiving it was authorized to act for the corporation.—*Kans. Lumber Co.* v. *Central*

COSTS—SECOND ACTION WHERE FIRST HAS BEEN DISMISSED BY PLAINTIFF.—Where an action has been commenced and before a trial plaintiff dismissed it, and subsequently brings another action for same cause, the proceedings in the latter case may be stayed until costs of former action be paid. —*Clemens, Adm'r* v. *Buffenberger.*—Filed March 3, 1886.—Ind.

COUNTY FUNDS—DEPOSIT—BOND TO SECURE REPAYMENT—LIABILITY OF BONDSMEN —Where county funds are deposited in a bank and a bond executed bv the bank to secure repayment on demand, the bond applies not only to one deposit, but to all deposits made while the bond is in force. A demand on the acting cashier of a bank for payment, is sufficient demand. Where a certificate of deposit was given, when an action is brought on the bond, the certificate should be brought into court for cancellation. —*Poor* v. *Merrill.*—Filed March 20, 1886. —Ia.

CRIMINAL LAW—LARCENY—GOODS STOLEN IN ONE COUNTY AND CAREIED TO ANOTHER.—Where parties stole goods in one county and took them to another county for the purpose of disposing of them, it is held that they may be convicted in the county where the goods were stolen, or in the county to which they carried them.—*Commonwealth* v. *Hayes.*—Filed Jan. 4, 1886.— Mass.

CRIMINAL LAW—ACTION OF THE WIFE, WHEN SUPPOSED TO BE UNDER CONTROL OF HUSBAND.—Where a criminal act is committed by a wife, although the husband was not present in the same room where the act was committed, but was in an adjoining room, the presumption of the influence of the husband over the action of the wife, is the same as though he were present in the room where the act was done.—*Commonwealth* v. *Flaherty.*—Filed Jan. 7, 1886.— Mass.

CRIMINAL LAW—APPEAL——OBJECTIONS NOT RAISED BELOW.—Where one charged with unlawfully keeping gaming implements for gambling pnrposes appears and defends and appeals from the judgment rendered and on appeal offers evidence "for the purpose of showing that no true and attested copy of the order of notice issued by the court was ever posted on the building," it is *held* that having appeared in the lower court, and not having offered the evidence there or raised the objection, it was too late on appeal to do so.—*Commonwealth* v. *Gaming Implements.*—Filed Feb. 23, 1886.—Mass.

CRIMINAL LAW—DELIVERY OF COPY OF COMPLAINT TO JURY—CLERICAL ERROR.—In the delivery to the jury of a copy of the

complaint where a clerical error is made, if the judge has fully instructed the jury on the point touching the error so that the jury cannot be supposed to be misled by the error, it will be held to be immaterial.—*Commonwealth* v. *Keenan.*—Filed Jan. 1886.—Mass.

CRIMINAL LAW — NEW TRIAL—NEWLY DISCOVERED EVIDENCE. — Where a witness was subpœnaed and failed to attend, and defendant failed to ask for a continuance on that ground, he could not after judgment obtain a new trial on the ground of newly discovered evicence, the testimony of the absent witness being the newly discovered evidence referred to.—*State* v. *McCool.*—Filed Feb. 4, 1886.—Colo.

CRIMINAL LAW—APPEAL FROM A JUSTICE OF THE PEACE—INSTRUCTIONS NOT EXCEPED TO —Where an appeal is taken from a justice to the district court, and the justice of the peace fails to certify the complaint, and the defendant goes to trial on a complaint which charges the same offense as the one filed with the justice he will be held to have waived the want of certification. Instructions given on the trial if not excepted to, will not be reviewed on appeal.—*State* v. *English.*—Filed Feby. 4, 1886.—Kans.

DEDICATION OF STREETS—ACREPTANCE BY CITY—RIGHTS OF ABUTTING LOT-OWNERS. Where the owner of a tract of land platted it as an addition to the city, laying out a street 90 feet wide, and sold lots therefrom, the city improved the street to a width of 60 feet only. The lot owners erected fences on the boundary of the improved street, without regard to the line on the plat. *Held* that after a lapse of twenty-five years, the city could not claim that portion of the street unimproved as against the lot-owners. —*Bell* v. *City of Burlington.*—Filed March 17, 1886.—Ia.

DEED—DESCRIPTION OF LAND—REPUGNANT WORDS REJECTED.—A description of land by metes and bounds as follows: "Beginning at the north-east corner of said lots 6 and 9, aud inclosing a strip the entire length of two lots," is good. In description in a deed that which is false or repugnant will be rejected to carry out the intention of the grantor.—*Holsten* v. *Needles.*—Filed Jan. 27, 1886.—Ill.

DEED—NOT ACKNOWLEDGED—ACKNOWLEDGEMENT MAY BE PROVFD OTHERWISE THAN BY A FORMAL OFFICIAL CERTIEICATE.—The purpose of a formal acknowledgement of a deed is to prove the execution thereof, and such execution may be proved by other evidence. The failure of a notary to affix his official seal to his acknowledgement is not necessarily fatal. Where an action is commenced to compel the conveyance of land those having equitable interests in the same are not affected by the decree unless they are made parties.—*Robinson* v. *Robinson.*—Filed Jan. 25, 1886.—

DISCRETION OF COURT IN REGULATING ITS SITTINGS—EVENING OR NIGHT SESSIONS OBJECTIONS BY COUNSEL.—It is within the sound discretion of a trial court to regulate its sittings, and the course of business during a trial. Where the court determines to hold an evening session against the protest and objection of defendant's counsel, in order to expedite the business of the court, it is not an abuse of its discretion.—*Wartena* v. *State.*—Filed Jan. 19, 1886.—Ind.

DIVORCE—EVIDENCE OF ADULTERY—CIRCUMSTANTIAL EVIDENCE.—In an action for divorce the fact of adultery may be proved by any evidence consistent with the general rule of evidence, which clearly satisfies the minds of those who are to pass upon the evidence. Circnmstances which are capable of two interpretations, should be given their plain and natural significance, and conclusions should be drawn intelligently and conscientiously.—*Allen* v. *Allen.*—Filed March 2, 1886.—N.Y.

ELECTION CONTEST—POWER OE A LEGISLATIVE COMMITTEE TO ISSUE SUBPŒNA DUCES TECUM TO THE CLERK OF COURT.—

A legislative committee appointed to make investigation in a contest of an election with power to send for persons or papers in the progress of such investigation may command the clerk of the court of common pleas, by a *subpœna duces tecum* to appear and produce the poll book which he has in his possession, and upon refusal to comply he may be committed to jail.—*Ex Parte Dalton.*—Filed March 9, 1886.—Ohio.

ELECTION OF ALDERMEN—CONTEST—STATUTORY PROVISIONS CONTROL.—In a contest of an election of alderman the contest must be heard by the tribunal appointed for that purpose by statute. The city council is the judge as to the qualification of its own members.—*Keating* v. *Stack.*—Filed Jan. 25, 1886.—Ill.

ESTOPPEL—TREASURER OF A CORPORATION DEPOSITING IN BANK OF WHICH HE IS CASHIER—LIABILITY OF THE BANK FOR HIS DEFAULT.—Where the treasurer of a school board was assistant cashier of the bank in which he deposited the school funds, and being in default he makes or causes to be made a fictitious entry on the books prior to settlemeat with the board of school directors, showing his account correct. Subsequently he causes the fictitious entry to be erased. On final settlement, being unable to account for the funds in his hands, an action is brought against the bank to recover the amount represented by the fictitious entry referred to. As there was no evidence that any officer of the bank was privy to the fraudulent transaction, *Held* that the bank was not liable.—*School-Dist. of Burlington* v. *Merchants National Bank.*—Filed March 18, 1886.—Ia.

ESTOPPEL—FORMER ADJUDICATION—A DISMISSAL BEFORE FINAL SUBMISSION IS NO BAR TO ANOTHER ACTION FOR SAME CAUSE.—A dismissal before final submission. is not a bar to a subsequent action, and no finding or verdict is required in such case. After plaintiffs had submitted their evidence, a motion for "judgment on the pleadings and evidence now before the court" being granted, it is construed simply as a dismissal of the action, as that is the only judgment which could be made at that stage of the proceeding, and such judgment is not a bar to another action for the same cause—*Andrews* v. *School-Dist.*—Filed Mch 8, 1886.—Minn.

ESTOPPEL—ACTION OF FORCIBLE DETAINER BY PURCHASER AT FORECLOSURE SALE.—Where the purchaser at a foreclosure sale was denied possession and brought an action for forcible detention, but failed to present the requisite proofs and consequently failed in his action, this does not bar another action for the same purpose.—*Cochran* v. *Fogler.*—Filed Jan. 25, 1886.—Ill.

ESTOPPEL—FORMER ADJUDICATION—PRIVILEGED COMMUNICATIONS.—A former adjudication cannot be pleaded in bar of an action unless it be between the same parties and for the same cause of action. Where an attorney has been employed to foreclose a mortgage, and in a subsequent action it is important as determining the rights of parties, it is not a violation of the rule of privileged communications to allow the attorney to testify as to his employment in obtaining the decree of foreclosure.—*Brigham* v. *Mc Dowell.*—Filed March 24, 1886.—N.Y.

EVIDENCE—PARTNERSHIP—NEW MEMBER CANNOT AVOID LIABILITY FOR DEBTS ASSUMED BY THE FIRM.—Where two parties were in partnership and a new firm is formed by the addition of a third party, the new firm taking the assets and assuming the liabilities of the old firm, the new member cannot be allowed to avoid liability on notes of the old firm by showing that there was a side agreement between themselves that he should not be liable for such debts. *Allendorph* v. *Wheeler.*—Filed Feb. 9, 1886.—N.Y.

EXECUTION ON JUDGMENT FOR COSTS—JUDGMENT WRONG AS TO AMOUNT—DEFENDANT'S REMEDY.—In a judgment for

costs in a case sounding in tort, no exemption can be claimed. Where the judgment is wrong as to amount, the defendant's remedy is to tender the amount actually due, and then apply for an injunction restraining the collection of the balance. No injunction can be had until payment or tender is made of that part which is correct.—*Russell* v. *Cleary*.—Filed March 4, 1886.—Ind.

EXECUTORS—ALLOWANCE FOR SUPPORT OF WIDOW AND CHILDREN—SURRENDER OF HER RIGHTS IN FAVOR OF CREDITORS.—Where a widow has surrendered some of her rights under husband's will, in favor of his creditors, she may have an allowance set off for her support and the support of her children. Where an allowance of $200 for each child and $500 for the widow was made by the county court, *Held* to be reasonable. —*In Re Estate of Henry*.—Filed March 16, 1886.—Wis.

EXEMPTION——PERSONAL EARNINGS——DEBTOR'S FAMILY RESIDING IN ANOTHER STATE.—The personal earnings of any member of a family, when necessary for the support of the family, for three months last past prior to the issue of process, is exempt from seizure for debt either on execution or attachment or by garnishee. If the family, except the debtor, live in another state, this does not change the rule of exemption.—*Zimmer-Man* v. *Franke*—Filed Feb. 4, 1886.—Kan.

FALSE IMPRISONMENT—HUMILIATION A QUESTION FOR THE JURY—DAMAGES.—In an action for false imprisonment, the court charged that "the right to compensation was made up of loss of time and the insult and humiliation put upon him. That is a part of the actual damage the plaintiff is entitled to and must be fixed by the jury." *Held* that this chrge was error as it practically withdrew the question of fact from the jury.—*Catliu* v. *Pond*.—Filed Feb. 8, 1886.—N.Y.

FIRE INSURANCE—CONTACT—WHEN COMPLETE—Application being made to an insurance agent, who represented different companies, for insurance and the agent agreeing on certain terms to place the insurance in some one of the companies he represented, one of the companies agreed to insure the property on terms somewhat different from that agreed upon by the agent. The property being destroyed before the acceptance of the terms offered by the company, no recovery can be had on the policy.—*Sheldon* v. *Hecla Fire Ins. Co*.—Filed Mch 16, 1886.—Wis.

FIRE INSURANCE—PROOF OF LOSS—BURDEN OF PROOF.—In an action to recover on a policy of fire insurance upon failure of plaintiff to produce proof of the amount of the loss, the defendant may have a nonsuit. Where evidence is offered and no objection made, it is to be evidence for all purposes only for which it is relevant.—*Hites* v. *Hanover Fire Ins. Co*.—Filed March 16, 1886. —Wis.

FIRE INSURANCE—CONVEYANCE OF PROPERTY IN PAYMENT OF A SPECIFIC DEBT—MORTGAGE.—A conveyance made by an insolvent debtor, to pay a debt particularly named, does not come within the scope of the act regulating general assignments for the benefit of creditors, and is not void because not complying with that act. A mortgage which does not contain the usual clause that the surplus, if any, shall go to the mortgagor, is not void for that reason.—*Roger Wheel Co.* v. *Fielding*.——Filed March 2, 1886.—N.Y.

FIRE INSURANCE—ARBITRATION—VALIDITY OF AN AWARD AS TO AMOUNT OF LOSS. —In the settlement of a loss by fire under an insurance policy where the parties agree to refer it to arbitrators to fix the amount of loss, and an award is made, and subsequently an action is brought on the policy, the award has no effect on the rights of the parties, except as evidence of the cash valne, or damages to the property destroyed.—*Soars* v. *Hsme Ins. Co*.—Filed Nov. 28, 1886.—Mass.

READ THE FOLLOWING EXPRESSIONS OF APPROVAL.

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ACQUIREMENT OF RESIDENCE—WHEN A QUESTION FOR JURY—WRONGFUL ASSESSMENT OF TAXES.—Where the question of one's residence is in issue and the evidence leaves the question in doubt, it is properly submitted to a jury. Where an action is brought for the recovery of taxes wrongfully assessed and paid, it appearing to the court that the assessment was illegal, the court may continue the case long enough to allow another assessment to be made.—*Johnston* v. *City of Oshkosh.*—Filed March 16, 1886.—Wis.

ADMINISTRATOR—OBTAINING AN ORDER OF FINAL SETTLEMENT FRAUDULENTLY.—Where an administrator fraudulently obtains an order of final settlement, the county court may vacate such order upon obtaining notice of the fraud, may require such administrator to again render his account, and a redistribuiion may be made.—*In Re Estate of Leavins.*—Filed March 16, 1886.—Wis.

ADULTERY—INDICTMENT FOR—DISMISSAL OF ACTION UPON MOTION OF DEFENDANT AND AFFIDAVIT THAT THE ACTION WAS COMMENCED UNDER DURESS.—It is not necessary that in an indictment for adultery it should be set out that the indictment was found at the instance of the husband or wife, and because it is alleged that the act of adultery was committed at several different times and places, does not render it demurrable on the ground of charging more than one offense. Such action can not be dismissed on motion of defendant supported by an affidavit that plaintiff commenced the action under duress.—*State* v. *Briggs.*—Filed March 19, 1886.—Iowa.

AGENT—ADMISSIONS OF—APPLICATION OF FACTS.—Where a horse driven by an agent ran away, and the horse and wagon was injured, the runaway and accident constitute the *res gestæ* and admissions and declarations of the agent relative to the accident may be admitted as part of the *res gestæ.*—*Edmonds* v. *Curtis.*—Filed Jan. 29, 1886.—Colo.

AGENT FOR SALE OF REAL ESTATE—WHEN COMMISSIONS ARE EARNED.—When an agent has been employed to procure a purchaser for real estate, and having procured such purchaser, who is able, ready, and willing to make the purchase on the terms offered, the agent is entitled to his commission, even though the owner refuse to convey the property as it was agreed.—*Hamlin* v. *Schulte.*—Filed March 1, 1886.—Minn.

AMENDMENT AFTER FINAL JUDGMENT—PENDING APPEAL.—Where a demurrer is interposed to a complaint and sustained, and the plaintiff refuses to amend but takes an appeal, the judgment of the lower court being affirmed, it is too late for plaintiff to amend his complaint. During the pendancy of an appeal, no amendment of the pleadings can be made in the trial court.—*Kirby*

sale of liquor is prohibited within 400 feet of a school house, and the rear end of a lot on which defendant's saloon stood, was less than 400 feet from a school house and on the rear end of said lot there was a gate through which persons might enter to the saloon. *Held* a question of fact for the jury to determine, whether there was or was not a violation of the statute in the matter of location.—*Commonwealth* v. *Everson*—Filed Jan. 7, 1886.—Mass.

INTOXICATING LIQUORS—OFFENSES—DEFENDANT FAILING TO TESTIFY IN HIS OWN BEHALF.—Where one is charged with an offense or crime, his privilege of giving testimony in his own behalf is a personal privilege, and his failure to do so raises no presumption against him. The offense of "keeping ittoxicating liquors with intent to unlawfully sell the same," is not identical with the offense of "keeping and maintaining a certain tenement for the illegal sale, and illegal keeping for sale, of intoxicating liquor."—*Commonwealth* v. *Hanley*.—Filed Jan. 7, 1886.—Mass.

INTOXICATING LIQUOR—ILLEGAL SALE OF —ENIDENCE.—In a prosecution for the illegal sale of liquor, to show that a witness had been ordered away from defendant's premises, has no bearing as showing ill-will towards tne defendant. To show that the officer who made the seizure knew of other parties who were selling illegally, but did not molest them, is also irrelevant and of no force upon the trial and should not be admitted.— *Commonwealth* v. *Fitzpatrick*.—Filed Jan. 7. 1886.—Mass.

INTOXICATING LIQUORS—LICENSE TO SELL IN FRONT AND REAR ROOMS WHICH ARE SEPARATED BY A PARTITION.—Where a license to sell intoxicating liquors expressly permits the licensee to sell in the front and rear rooms of a building on a certain floor, and the rear room is separated from the front by a screen or partition, such license is not in confiict with the provisions of the public statute on the subject.—*Commonwealth* v. *Barnes*.—Filed Jan. 7, 1886.—Mass.

INTOXICATING LIQUORS—ILLEGAL SALE OF —EVIDENCE.—In an action for the illegal sale of intoxicating liquor, it is proper for a witness to testify as to what kind of liquor he thought it was, he having drank some of the liquor.—*Commonwealth* v. *Moinehan*.—Filed Jan. 8, 1886.—Mass.

JUDGMENT—— NON-RESIDENT HEIRS—RIGHT TO HAVE JUDGMENT OPENED—AFFIDAVIT OF WANT OF NOTICE.—Where a decree of specific performance is obtained against an executor in favor of the vendee of a decedent, and non-resident heirs have had no notice of the proceeding, they may have the judgment opened at any time within five years. If the affidavit of want of notice is made by an attorney. who has personal knowledge of the facts, it will be sufficient; although it should ordinarily be made by the plaintiff himself.—*Reed, Adm'r* v. *Thompson*.—Filed March 24, 1886.—Neb.

JUDGMENT BY JUSTICE OF THE PEACE—RENDERED AFTER EXPIRATION OF TIME FIXED BY STATUTE—INJUNCTION.—Where a justice of the peace renders jndgment after the expiration of the time fixed by statute, if he has had jurisdiction of the parties and subject matter, the judgment cannot be collaterally attacked by injunction. The judgment may be corrected by proceedings commenced for that purpose.—*Gould* v. *Loughran*.—Filed March 24, 1886.—Neb.

JUSTICE OF THE PEACE—JURISDICTION—INSTALLMENTS ON A BOND.—Where the penalty on a bond is $500 or more, and the conditions are such that installments of $200 or less become due and payable, an action on one of the installments of less than $200 which has become due and payable may be maintained in a justice's court. A release of a sealed instrument may be a sufficient consideration for a bond which is made to take the place of the instrument

released.—*Buechel* v. *Buechel.*—Filed Mch 16, 1886.—Wis.

LANDDORD AND TENANT—LEASE CONDITIONED UPON A SALE OF THE PROPERTY BEFORE COMMENCEMENT OF TERM.—Where a lease is executed and conditioned upon the possible sale of the premises before the beginning of the term of the lease, the lease cannot be voided by a sham sale of the property for the purpose of defeating the lease.—*Trout* v. *Perciful.*—Filed March 6, 1886.—Ind.

LANDLORD AND TENANT—ACTION FOR RENT—RENT ACCRUING AFTER COMMENCEMENT OF RENT.—Where suit is commenced for rent in arrears on a written lease and the lessee remains in possession, a supplemental complaint may be filed for rent accruing after the action was commenced.—*Sigler* v. *Coudon.*—Filed March 20, 1886.—Ia.

LANDLORD AND TENANT—CHATTEL MORTGAGE.—Where property subject to a chattel mortgage is used upon leased premises, and the lease being assigned, the second lessee purchases the mortgaged property subject to the chattel mortgage, the lien of the mortgage is prior to the lien of the landlord for rent.—*Perry v. Waggoner.*—Filed March 19, 1886.—Iowa.

LIBEL—CIRCULATION OF PAPER MAY INDICATE IN SOME DEGREE THE MEASURE OF DAMAGES—COMPETENCY OF JURORS.—Where a libel is published in a newspaper the extent of the circulation of the paper may be shown as evidence of the extent of the injury done to the plaintiff. The fact that an uncle of a juror married an ant of the plaintiff does not disqualify such juror from sitting in the case. For a person to say that in such a paper can be found a certain libelous article does not of itself constitute a cause of action for libel.—*Bigelow* v. *Sprague.*—Filed Jan. 9, 1886.—Masss.

LIBEL—EVIDENCE—OPINION OF WITNESS Where a promissory note was presented for payment, and the party of whom the demand was made replied that he believed the note was a forgery, and an action of libel is brought on these words, it is not competent for a witness who heard the words spoken, to testify as to what party was charged with the crime of forgery.—*Anderson* v. *Hart.*—Filed March 19, 1886.—Ia.

LIFE INSURANCE—FAILURE OF COMPANY TO GIVE BENEFICIARY NOTICE OF DIVIDENDS.—SURRENDER BY HUSBAND WHEN WIFE IS THE BENFICIARY.—When a life policy was issued on the husband's life in favor of his wife, and the dividends to be applied annually in reduction of the premium, the company cannot claim a forfeiture for non-payment of the premium, if they fail to give the benificiary notice of the premium due and also of the dividend applicable. An action may be maintained by a beneficiary for whose benefit a promise has been made upon a consideration moving from a third party and the contract cannot be changed without the consent of the beneficiary.—*Manhattan Life Ins. Co.* v. *Smith.*—Filed March 9, 1886.—Ohio.

LOST DOCUMENT—CONTRACT FOR SALE OF LAND—PROOF OF CONTENTS—VENDOR AND VENDEE.—Where negotiations have been had looking to the sale of land and duplicate agreements have been signed, in an action on the contract, where the written agreement has been lost parol proof of its contents is admissible. When the vendor has performed his part of the contract, the refusal of the vendee to comply with his part, will justify the vendor in rescinding the contract.—*Gilpin Miring Co.* v. *Drake.*—Filed Jan. 29, 1886.—Col.

MALICIOUS MISCHIEF—WHEN MALICE IMPLIED—MAIMING ANIMALS.—Where a person inflicts injury on an animal wilfully and without cause, the law will imply malice towards the owner of the animal. Where the defense is that the injury was inflicted for the purpose of preventing the animal from doing injury to defendant's property, the jury may consider the manner of inflict-

ing the injury as bearing on the question of malice.—*State v. Williamson.*—Filed March 18, 1886.—Ia.

MARINE INSURANCE—"VALUED" POLICY—THE TERM INJURED BY "A SEA" CONSTRUED.—In a marine policy of insnrance the blank form "valued at $———" was left unfilled and in an action on the policy it was held to be an open and not a "valued" policy. The policy contained the clause of indemnity against loss by "a sea," *Held* that this term did not mean loss by a single wave, but covered injury caused by the tossing of the ship in a storm.—*Snowdon v. Guion.*—Filed March 2, 1886.—N.Y.

MASTER AND SERVANT—NEGLIGENCE OF CO-SERVANT—LIABILITY OF MASTER FOR INJURY.—An employer is chargeable with knowledge of appliances to be used in performing his work. Where one servant is delegated to do what the employer should do himself, the employer will be held liable for negligence of that servant. Where one employe was called to assist another, and the latter told him a platform on which he had to stand was safe, and in going upon the platform he was injured by reason of its unsound condition, it is *held* that an action might be maintained against the employer, and the question of contributory negligence of the injured party was a question of fact for the jury.—*Benzing* v. *Steinway.*—Filed March 2, 1886.—N. Y.

MASTER AND SERVANT—OBLIGATIONS OF MASTER TO FURNISH SAFE MACHINERY—RISKS OF EMPLOYE.—Where an employer has in use machinery somewhat worn but otherwise perfect, it is not negligence on his part to refuse to replace the machines with new ones. A threat of employer to discharge an employe if he does not use the machines is not coercion. The employe assumes the ordinary risk of the work which he undertakes to do.—*Sweeny* v. *B. & J. Envelope Co.*—Filed March 2, 1886.—N.Y.

MENTAL INCAPACITY—PROBATE OF WILL—SUBSEQUENT ACTION TO DECLARE A MORTGAGE VOID.—Where a devisee under a will joined in a petition for the probate of the will, and subsequently briugs an action for setting aside a mortgage executed by the testator, on the ground of mental incapacity at the time the mortgage was executed, his petition or testimony in support of the will, is not competent evidence as admission of testator's sanity.—*Brigham* v. *Fairweather.*—Filed Jan. 5, 1886.—Mass.

MORTGAGE—DEED ABSOLUTE ON ITS FACE CONSTRUED AS A MORTGAGE—REDEMPTION—A deed absolute may be shown by parol evidence to have been intended simply as security for a debt, and will in such case be held to be a mortgage. The holder of such a mortgage or deed has *prima facie* the right of possession. In an action to obtain possession it is a good defense to show that the instrument was intended for a mortgage only. *Cox* v. *Ratcliffe.*—Filed Feb. 18, 1886.—Ind.

MORTGAGE——DEED CONSTRUED AS——RIGHTS OF ONE CLAIMING UNDER.—Where a party claiming in good faith under a deed which was ultimately construed as a mortgage, has improved the land he is entitled to compensation for such improvements when he is compelled to surrender possession of the land.—*Headley* v. *Stewart.*—Filed Mch 16, 1886.—Wis.

MORTGAGE—REDEMPTION BY JUDGMENT CREDITOR—PAYMENT FOR PERMANENT IMPROVEMENTS.—Where a mortgage is foreclosed on land, and a judgment creditor of the mortgagor is not made a party to the foreclosure proceedings, he has the right to redeem the land sold. As a general rule he cannot be compelled to pay for improvements made on the land by the purchaser, but there are exceptions to this rule. An innocent purchaser may in equity insist on payment for permanent improvements.—*A. B. O. S. & Co.* v. *B. M. Loan Ass'n.*—Filed March 17, 1886.—Ia.

MORTGAGE—DEED ABSOLUTE ON ITS FACE CONSTRUED AS A MORTGAGE—EVIDENCE.—An absolute deed was executed conveying certain land for $250 and a bond given whereby the grantee bound himself to re-convey the property at any time within two years upon the payment of $250. The payment or tender of the money was not made within the two years, but was made subsequently and refused, and an action brought on the bond to compel a re-conveyance. In the trial plaintiff was permitted to introduce his account book wherein he showed an entry of credit of the purchase price of the land. *Held* error, and the judgment reversed and remanded.—*Ross* v. *Brusie.*—Filed Feb. 26, 1886.—Cal.

—MORTGAGE—PAYMENT BY CHECK—NEW MORTGAGE EXECUTED FOR LIKE AMOUNT.—Where a mortgagor and mortgagee agreed together that the existing mortgage should be cancelled and a new one made at a lower rate of interest, and the mortgagor drew his check for the amount of the debt and delivered it to the mortgagee who called at the bank, asked the cashier if it was good, and was informed that it was. He then delivered the check back to the mortgagor as a new loan, and took a new note and mortgage. *Held* that there was no payment made, and the last mortgage was a nullity. *Woodburn* v. *Woodburn.*—Filed Jan. 25, 1886.—Ill.

MUNICIPAL CORPORATIONS——RAILROAD AID TAX—CONSTITUTION OF 1870.—By the constitution of 1870 municipalities are prohibited from voting a tax in aid of a railroad corporation, but a tax voted prior to the time that constitution went into effect, is valid. Such tax voted prior to the enactment of the constitution of 1870, subject to the conditions as to time of completing the railway, cannot be extended by the corporation. If the conditions are not complied with, the assessment of the tax will fall.—*Richeson* v. *Jones, Coll.*—Filed Jan. 25, 1886.—Ill.

MUNICIPAL CORPORATIONS—ORDINANCES APPROPRIATING MONEY—THE WORD "MAY" SHOULD BE CONSTRUED AS "SHALL."—Where the statute provides that "such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation," the word *may* should be construed as *shall. Mandamus* is the proper remedy to compel a municipality to levy and collect a tax to pay a judgment against the corporation.—*City of Cairo* v. *Campbell.*—Filed Jan. 25, 1886.—Ill.

MUNICIPAL CORPORATIONS—DEFECT IN SIDEWALK—LIABILITY OF CITY.—Where an injury has been caused by defective coal-hole in sidewalk, where the defect was not known to the city authorities, and could not be seen from the street, the city is not liable for damages.—*Hanscom* v. *City of Boston.*—Filed Feb. 26, 1886.—Mass.

MUNICIPAL CORPORATION—OBSTRUCTION IN HIGHWAY—QUESTION FOR JURY.—Where lumber was permitted to lie on the side of a roadway, and a traveller's horse becoming frightened ran the carriage against the timber and injured the occupant of the carriage, in an action for damages it is *held* to be a question for the jury whether the lumber was in such a position as to be an obstruction in the highway or not.—*Davis* v. *Charlton.*—Filed Jan. 6, 1886.—Mass.

MUNICIPAL CORPORATIONS—POWER OF THE GOVERNOR TO REMOVE POLICE COMMISSIONERS.—The power conferred on the governor, by act of April 3, 1885, to remove police commissioners, is not a judicial act and cannot be reviewed on *quo warranto* proceedings, whether he erred or not, in the exercise of his power.—*State* v. *Hawkins.*—Filed March 9, 1886.—Ohio.

MUNICIPAL CORPORATIONS—ACT REGULATING A CERTAIN CLASS OF CITIES—POWER OF MAYOR OF CINCINNATTI TO REMOVE SUPERINTENDENT OF POLICE.—An act passed

April 3, 1885, provides for a police force in "cities of the first grade, first class," held constitutional. The mayor of Cincinnatti has no power to remove the superintendent of police.—*State* v. *Hudson.*—Filed March 9, 1886.—Ohio.

MUNICIPAL CORPORATIONS—IMPROVING MARKET SPACE—ASSESSMENTS.—A city has no authority to assess property adjoining a market space for the improvement of the same. It does not come within their power to improve such place the same as a street. Where such an assessment has been made, the remedy of property owners who have been assessed, is by injunction restraining the collection of the same.—*Ft. Wayne* v. *Shoaff.*—Filed March 2, 1886.—Ind.

NEGLIGENCE—INJURY TO EMPLOYE—DEATH OF A MINOR—WHO MAY RECOVER.—Where a young man, a minor, was employed as a brakeman, and before he had become familiar with the work or the danger incident to it, while in the act of descending a ladder on the side of a car, he comes in contact with a post standing 14½ inches from the moving car and is killed. *Held* in an action for damages by the father of deceased, that the question of negligence of the company was properly submitted to the jury; and that the father might recover.—*Robel* v. *C.M.&St.P.RyCo.*—Filed March 12, 1886.—Minn.

NEGOTIABLE BONDS—WAREHOUSE RECEIPTS.—A warehouse receipt is negotiable unless expressly written non-negotiable, and delivery of the same passes an absolute title to the property it represents. It is within the power of the legislature to make such receipts negotiable.—*Bishop* v. *Fulkerth.*—Filed Feb. 25, 1886.—Cal.

NEW TRIAL—JUDGE PRESIDING TEMPORARILY AND SUBSEQUENTLY WHILE IN ANOTHER COUNTY MAKING THE ORDER.—Where a judge has been called upon to preside temporarily in another county in place of the regular judge, aud after trial of a case before him he returns to his own county, he has power to hear and determine a motion for a new trial.—*Matthews* v. *Superior Court.*—Filed Feb. 27, 1886.—Cal.

NEW TRIAL—ABSENCE OF WITNESSES—FRAUDULENT REPRESENTATIONS.—Where at the time of going to trial of a case, a party knows that an important and material witness cannot be present, he should ask for a continuance, and failing to do so, he cannot after verdict, ask for a new trial on the ground of the absence of such witness. A party fraudulently representing the value of corporate stock, is not liable for so doing, unless he does so knowingly and unless the party pnrchasing the same relied upon such fraudulent representations.—*Gee* v. *Mass.*—Filed March 17, 1886.—Iowa.

OBSTRUCTION ON BRIDGE—INJURY—LIABILITY OF TOWN—Where a town is required to keep in repair a bridge across a railway, and the bridge being destroyed by fire, the railway company constructs a tempory one, which obstructs the highway, if the select men of the town file a formal complaint with the county commissioners against such obstruction, they do all they can towards the removal of the obstruction, and the town is not liable for the removal of such obstruction subsequently.—*Flanders* v. *Norwood.*—Filed Jan. 11, 1886.—Mass.

OFFICERS—WRONGFULLY REMOVED—ENTITLED TO THE SALARY.—Where an officer is wrongfully removed from office and a successor appointed, upon the reinstatement of the party wrongfully removed, he is entitled to the salary for the term for which he was wrongfuily excluded from the excercise of the functions of his office.—*Nichols* v. *McLean.*—Filed March 2, 1886.—N.Y.

PARTNERSHIP BETWEEN ATTORNEYS—DISSOLUTION AND RIGHTS OF THE PARTNERS IN UNFINISHED BUSINESS.—In the dissolution of a law firm each partner is entitled to share in the fees of unfinished business, on agreement

of one partner to wind up the business and pay the other his portion of fees in unfinished busines is supported by a valid and sufficient consideration.—*Osment* v. *McElrath.* —Filed Jan. 29, 1886.—Cal.

PARTNERSHIP IN MINING—WHEN IT MAY EXIST—LAW OF.—Where two or more parties cooperate in working a mine, it constitutes a partnership between them. The law of commercial partnerships does not apply in all respects to a mining partnership, but in reference to the power of one partner to act for and bind the firm by his acts, the law is the same.—*Higgins* v. *Armstrong.* —Filed Feb. 26, 1886.—Cal.

PARTNERSHIP—POWER OF ONE PARTNER TO BIND FIRM—MAKING OF A PROMISSORY NOTE—PROCEEDS USED BY FIRM.—A member of a firm, not a commercial or trading firm, cannot bind the firm by the execution of a promissory note, although the proceeds of the note be used to pay a debt of the firm, where the transaction is wholly outside of the firm's business.—*Bays* v. *Conner.*—Filed Feb. 29, 1886.—Ind.

PARTNERSHIP—BUSINESS CARRIED ON AT TWO DIFFERENT PLACES UNDER DIFFERENT FIRM NAMES—ONE PARTNERSHIP ONLY.—Where two or more persons form a partnership and carry on the business at two different places under different firm names, in law they are but one partnership. An assignment for the benefit of creditors if valid in the state where the debtor resides, affects personal property which is in another state. —*Campbell* v. *Col. Coal & Iron Co.*—Filed March 1, 1886.—Colo.

PARTNERSHIP—DISSOLUTION—CONTRACT OBTAINED BY FRAUD NOT BINDING.—Where a firm has been dissolved and a creditor is induced by fraud to release the retiring partner from liability, such release will not bind the creditor. Any contract obtained by fraud may be set aside.—*Clark* v. *Taylor* —Filed April 7, 1886.—Ia.

PARTITION BY TENANTS IN COMMON—MUTUAL MISTAKE IN DIVISION LINES—REFORMATION OF DEED.—Where partition is agreed upon by tenants in common and in the making of the deed a mistake is made which changes the boundary line, the deed may be reformed by an action for that purpose, upon showing the mistake and the intention of the parties.—*May* v. *Adams.*—Filed April 1 1886.—Tt.

PARTITION—CONVEYANCE PENDENTE LITE —CONTRACT RELATING TO COSTS.—While an action for partition is pending the plaintiff conveys his interest to defendant, it is held that the defendant is chargeable with costs of the proceedings, taxed to the grantor on that portion conveyed to him, whether there was a contract between the parties to that effect or not—*Wickersham* v *Denman*—Filed Jan. 27, 1886.—Cal.

PITTSBURG STREET IMPROVEMENTS—CONSTITUTIONALITY OF THE ACT OF MAY 13, 1871. —An act authorizing the city council to appoint viewers who shall determine the necessity for repaving streets and whether the benefits are local or general and if local to assess the benefits on property owners within a district prescribed by said viewers. *Held* unconstitutional on the ground of imposing unequal burdens.—*In Re Protestant Orphan Asylum.*—Filed Jan. 4, 1886.—Pa.

PLEADING—NEGLIGENCE—RISK ASSUMED BY AN EMPLOYE—WHEN EMPLOYER IS LIABLE FOR INJURY RECEIVED.—In an action for damages for a personal injury caused by negligence, the allegation in the complaint that the injury complained of was caused by the negligent act of defendant and that the plaintiff was without fault in the matter, is *held* sufficient. A servant is held to assume the ordinary risks incident to his employment, but if he is placed at other work than that for which he was employed which is extra hazardous, he may recover of the employer for any injury received while so engaged, unless he voluntarily assumes such risk.—*P.C.&St.L.Ry Co.* v. *Adams*—Filed Feb. 10, 1886.—Ind.

PLEADING—DISCRETION OF COURT IN ALLOWING AMENDMENT—ILLEGAL ASSESSMENT OF TAXES.—It is within the discretion of the court to allow an answer to be so amended as to let in a plea of the statute of limitations. A party seeking to amend his pleading should be required to pay all costs up to the time of amendment. Where taxes have been levied for eighteen years and it is alleged that during all this time the levy has been illegal, the court should require very clear proof before holding the levy illegal.—*Smith* v. *Dreggert.*—Filed March 16, 1886.—Neb.

PLEADING—SPECIFIC AVERMENTS—WILLFUL TORT—NEGLIGENCE.—A complaint in an action to recover for personal injuries, must aver specifically that plaintiff was free from contributory fault, or state facts from which this can be inferred, unless it charges a willful tort. Where a willful tort is charged and the evidence shows mere negligence, the latter will control.—*L. N. A. & C. Ry Co.* v. *Schmidt.*—Filed March 16, 1886.—Ind.

PLEADING—DECREE CANNOT GRANT RELIEF NOT PRAYED FOR—CAUSE SET FOR HEARING AT ONE PLACE AND HEARD AT ANOTHER.—A default admits only such matters as are well pleaded and relief that is not prayed for in a petition cannot be granted in the decree. Where it is agreed by the parties that a cause shall be heard at a certain place and it is subsequently heard at a different place where the parties are present and no objection is raised, it will be presumed that all objection was waived.—*Johnson* v. *Mantz.*—Filed April 7, 1886.—Ia.

PLEADINGS IN JUSTICE'S COURT—SUFFICIENCY OF COMPLAINT—ENTRY OF JUDGMENT.—The Code requires that pleadings in the snperior court shall be subscribed by the party or his attorney, but pleadings in a justice's court do not come under this rule. A complaint alleging a debt of "one hundred dollars, for money borrowed on the thirty-first day of January, 1884," where the defendant went to trial on this complaint without objection, and on appeal the objection being raised it is *held* sufficient. Judgment being rendered and an appeal taken, and on appeal objection is made that when the appeal was taken the judgment had not in fact been entered, the objection is overruled. *Montgomery* v. *Superior Court.*—Filed Jan. 27, 1886.—Cal.

PREFERENCE OF CREDITORS—ACTION BY ASSIGNEE TO RECOVER PROPERTY CONVEYED—INTENT OF DEBTOR.—Where an action is brought by an assignee of an insolvent debtor to recover property conveyed in preference of creditors, on the ground of fraud, it is incumbent on the assignee to show fraudulent intent on the part of the debtor and also of the preferred creditor.—*Stearns, Assignee* v. *Gosslin.*—Filed April 1, 1886.—Vt.

PRINCIPAL AND AGENT—IMPLIED AUTHORITY OF AGENT—POWER TO SELL CHATTELS IMPLIES THE RIGHT TO COLLECT PAY FOR SAME.—An agent having the power to sell chattels has an implied authority to collect the pay for the same. An agency is presumed to be general unless the limitations are brought to the notice of those dealing with the agent.—*Trainer* v. *Morrison*—Filed Feb. 13, 1886.—Me.

PRINIPAL AND AGENT—DUTY TO ACCOUNT TO HIS PRINCIPAL—PRINCIPAL INTERFERING SO AS TO MAKE IT DIFFICULT FOR THE AGENT TO ACCOUNT.—Where a principal by his own acts causes confusion in his business conducted by his agent, so that it is difficult for the agent to account properly to his principal, he will not be held to a rigid rule in accounting.—*Robbins* v. *Robbins.*—Filed Nov. 21, 1885.—N. J.

PRINCIPAL AND SURETY—EFFECT OF ANY MATERIAL VATIATION OF ORIGINAL CONTRACT—DISCHARGE OF SURETY.—Any new contract materially varying the original contract without the assent of the surety works a complete discharge of the surety.—*Steele* v. *Mills.*—Filed March 19, 1886.—Ia.

PRINCIPAL AND SURETY—IMPEACHMENT BY SURETY OF JUDGMENT AGAINST PRINCIPAL.—Where judgment has been obtained on a bond against the principal, in a subsequent action on the bond against the surety, he may impeach the jurisdiction of the court which rendered judgment against the principal.—*Fall River* v. *Riley*.—Filed Jan. 9, 1886.—Mass.

PROMISSORY NOTE—SUFFICIENCY OF CONSIDERATION—MORTGAGE DEBT PAYABLE IN INSTALLMENTS, THE WHOLE TO BECOME DUE UPON DEFAULT OF ONE INSTALLMENT.—Where one agrees to take care of a child for another for a time and the latter makes his promissory note in payment for the same, there is a sufficient consideration to support the note. Where a mortgage debt is payable in installments and the mortgage stipulates that upon default in the payment of one installment the whole debt shall become due and payable, an action may be had on a note not yet due when default has been made.—*Clayton* v. *Whittaker*.—Filed Mch 19, 1886.—Iowa.

PROMISSORY NOTE—PAYABLE AFTER THE DEATH OF THE MAKER—VALIDITY OF.—A promissory note payable one day after the death of the maker, has all the essential features of a promissory note and is valid. It is sufficient to file such note as a claim against the estate of the decedent without any formal complaint.—*Price, Adm'r* v. *Jones*.—Filed March 9, 1886.—Ind.

PROPERTY IN HUSBAND'S NAME PAID FOR BY WIFE—ACT OF 1860.—RIGHTS OF WIFE AS AGAINST HUSBAND'S CREDITORS.—Where property purchased and paid for with the wife's money but held in the name of the husband, prior to the enactment of the Code of 1860, the property cannot be held by the husband in trust for the wife, but is subject to the debts of the husband. One who purchases property from the surety on a guardian's bond, takes subject to the default of the guardian if he has had notice.—*Flynn* v. *Walsh*.—Filed Oct. 1885.—Md.

PUBLIC LANDS—EFFECT OF RULING OF THE REGISTER OF A LAND OFFICE—PRESUMPTIONS OF REGULARITY.—In a contest between different claimants for public land, the rulings of the register of a land office on a question of fact cannot be questioned collaterally. The presumptions of regularity of proceedings are in favor of any tribunal established by law.—*VanSant* v. *Butler*.—Filed March 17, 1886.—Neb.

RAILROAD AID-TAX—REPEAL OF STATUTE AFTER THE ROAD IS BUILT BUT BEFORE THE TAX IS LEVIED.—Where a tax has been voted in accordance with a statute in force, in aid of the construction of a railroad, and the statute authorizing such tax is subsequently repealed, but before it is repealed the railway company has performed the conditions which entitled it to the payment of the tax, the town or county is bound to levy and pay the tax. The repeal of the law does not void the obligation assumed.—*Burgess* v. *Mabin*.—Filed April 7, 1886.—Ia.

RAILROAD COMPANY—NEGLIGENCE—ACCIDENT AT CROSSING OF HIGHWAY.—In an action by the widow for damages for causing the death of her husband while crossing the railway track on the highway, it appeared that the flag-man had left the crossing, and that the engineer failed to blow the whistle in approaching the crossing. *Held* that the company was guilty of negligence, and the plaintiff was entitled to recover.—*Penn. Ry Co.*—Filed Jan. 25, 1886.—Pa.

RAILROAD COMPANY—LIABILITY FOR THE DEBTS OF A CONTRACTOR WHO BUILDS A ROAD—FILING OF HIS BOND.—A railroad company, to avoid liability for the debts of a contractor who contracts to build the road must take from him a good and sufficient bond. It is not essential that the bond be filed in the office of the register of deeds. A teamster employed with his team at a fixed amonnt per day, is a laborer within the meaning of the statute.—*Mann* v. *Burt*.—Filed March 5, 1886.—Kans.

RAILWAY COMPANY—FIRE CAUSED BY SPARKS FRON ENGINE—OUTSIDE OF THE RIGHT OF WAY.—In an action for loss by fire caused by sparks from an engine, where the company show that the fire started outside of the right of way of the railway company, the plaintiff may rebut such testimony by showing that other fires were started on the same day by sparks from the same engine, such evidence tending to show that the engine was not properly constructed.—*Launing* v. *C.B.&Q.Ry Co.*—Filed April 7, 1886.—Ia.

RAILWAY COMPANY—LIABILITY FOR FAILURE TO FENCE TRACK WHILE CONSTRUCTING A ROAD.—The statute makes a railway company liable for double the amount of actual damage caused to stock by reason of the failure of the company to fence the track. Where such damage is done to cattle while the road is in process of construction, by a construction train, the liability of the company is the same as though the road was in full operation.—*Glandon* v. *C.M.&St.P.Ry Co.*—Filed April 6, 1886.—Ia.

RAILWAY COMPANY—SUBSCRIPTIONS TO STOCK BY INSOLVENT PARTIES—FORFEITURE OF CHARTER.—Where a charter of a corporation is conditioned upon the subscription of a certain amount of stock, and the required amount of subscription is made up in part by persons notoriously insolvent, upon *quo warranto* proceedings when the insolvency of the parties is shown and the valid subscriptions are insufficient to comply with the charter, it will be forfeited to the state.—*Holman* v. *State.*—Filed March 12, 1886.—Ind.

RAILWAY STATION AGENT—SCOPE OF HIS POWERS—COMPANY BOUND BY ANY CONTRACT WITHIN THE SCOPE OF HIS POWERS. Where a railway company places an agent in charge of the business at a station, with power to contract for the shipment of freight he has the implied power to contract for anything necessary in the details of the business, and whatever is necessary to be done to protect the freight from injury while in possession of the company.—*Wood* v. *C.M.&St.P. Ry Co.*—Filed April 7, 1886.—Ia.

RAILWAYS—NEGLIGENCE—TESTIMONY OF PASSENGERS WHO WERE IN A POSITION TO, BUT DID NOT HEAR THE RINGING OF THE BELL.—In an action for injury received at a crossing of a highway where it was the duty of the engineer to ring the bell on approaching, it was held that the testimony of passengers who were in a position to have heard the bell,if it had been rang, was properly admitted on the trial.—*Greeney* v. *Long Island Ry Co.*—Filed March 2, 1886.—N.Y.

RAPE— CONVICTION FOR AN OFFENSE LESS THAN CHARGED—INSTRUCTIONS.—On a trial of an indictment for rape, where the court instructs the jury that they might convict for a lesser offense than charged, if the evidence justified such finding, it is not error for the court to add to that instruction that if they had a reasonable doubt as to the degree of the offense they should convict of the lesser.—*State* v. *Neis.*—Filed April 7, 1886.—Ia.

RECEIVER—CORPORATION INSOLVENT OR IN DANGER OF INSOLVENCY.—Where a corporation is insolvent or in imminent danger of insolvency, an application for a receiver may be entertained, and if an application be made to a judge in vacation and the defendant voluntarily appears, such appearance will be deemed to be service and the suit will be deemed to have commenced from the date of such appearance.—*First Nat. Bank* v. *U.S.E. Tile Co*—Filed Jan. 30,1886.—Ind.

REPLEVIN—NOMINAL DAMAGES—CHANGE OF OWNERSHIP—PRESUMPTION.—In an ac- of replevin where recovery is had on the main issue, no proof is necessary to sustain an award of nominal damages. In the absence of any averment in the pleadings, or any evidence to sustain the fact of a change of ownership the presumption is that there has been no change.—*Hammond* v. *Saliday.*—Filed Jan. 29, 1886.—Kans.

REINSURANCE—LIABILITY OF THE REINSURING COMPANY—RIGHTS OF POLICY HOLDER—Where an insurance company, having issued a policy or policies of insurance, and subsequently desiring to go out of bnsiness,causes the property to be reinsured in another company, in case of loss the policy holder may maintain an action against the latter company on the policy of the former company.—*Johannes* v. *Phœnix Ins. Co.*—Filed April 6, 1886.—Wis.

REMOVAL OF CAUSE FROM STATE TO FEDERAL COURT—WHEN STATE COURT HAS JURISDICTION AFTER PETITION FILED.—Where a petition is filed for the removal of a cause from the state to the federal courts, unless the facts on which the removal is asked are such as to bring it within the statute, and entitle the petitioner to a removal, the state court has jurisdiction, and may proceed to try the case notwithstanding the filing of the petition.—*Dunne* v. *B.C.R. & N. Ry Co.*—Filed March 12, 1886.—Minn.

REPLEVIN—APPEAL—NONSUIT IN THE APPELLATE COURT AND PROPERTY RETURNED.—In an action of replevin where judgment is rendered for plaintiff and defendant appeals, the district court may grant a nonsuit and give judgment for return of property and damages for its detention.—*Fugina* v. *Brownlie.*—Filed April 6, 1886.—Wis.

REQUIREMENTS IN ACKNOWLEDGEMENT OF DEED—WITNESSES—NOTARIAL SEAL.—A deed cannot be recorded until acknowledged as required by statute. A notary public should authenticate his certificate with his notarial seal. A deed acknowledged before a notary public who does not affix his official seal to the same, cannot be admitted in evidence.—*Meskimen* v. *Day.*—Filed March 5, 1886.—Kans.

RES ADJUDICATA—WHEN DISMISSAL OF A BILL HELD TO BE.—A former decree in equity dismissing a bill, between the same parties for the same subject matter, will be a good defence to another action, unless the former bill was dismissed without prejudice. *Knowlton* v. *Homburg.*—Filed Jan. 25, 1886.—Ill.

REVIEW OF MOTION FOR NEW TRIAL—TIME IN WHICH A CASE MUST BE MADE FOR THE SUPREME COURT.—Unless an extension of the time be granted, a case must be made for the supreme court within three days after the rendering of judgment. If the case is not brought to the supreme court within one year from the rendering of judgment, the supreme court cannot review the case.—*Dyal* v. *City of Topeka.*—Filed March 5, 1886.—Kans.

SALE OF GOODS—SOLD IN ONE STATE FOR AN ILLEGAL PURPOSE IN ANOTHER STATE—RIGHTS OF THE VENDOR.—Where goods are sold in one state for an illegal purpose to be used in another state, the knowledge of the vendor that they were to be so used will not prevent his maintaining an action for the purchase price. If he sold the goods for purpose that the law should be violated, or if he was interested financially in carrying out the illegal purpose, then his action may be defeated.—*S.B. Distilling Co.* v. *Nutt.*—Filed March 5, 1886.—Mass.

SALE ON A SATISFIED JUDGMENT—NOTICE—KNOWLEDGE OF ATTORNEY—NOTICE TO CLIENT.—A sale of property on a judgment which has been satisfied, passes no title. A judgment by confession in favor of a creditor of which he or his attorney has no knowledge is invalid. A judgment by confession is invalid unless the debtor makes affidavit that he justly owes the debt. It may be held good as between the parties, but void as to creditors.—*Chapin* v. *McLaren.*—Filed March 10, 1886.—Ind.

SLANDER—AMENDMENT OF COMPLAINT CHARGING OTHER WORDS—In an action for slander it is error to allow an amendment charging other words as the basis of action than those in the original complaint. The

proof must be confined to the words alleged in the original complaint.—*Geary* v. *Bennett.*—Filed March 16. 1886.—Wis.

SPECIFIC PERFORMANCE—DELAY IN SEEKING RELIEF—VERBAL CONTRACT FOR SALE OF LAND.—Equity will not decree specific performance of a contract where there has been unreasonable delay in seeking relief. An unexplained delay of two years is held to be unreasonable and to bar relief. Where it is sought to enforce the performance of a verbal contract for the sale of lands on the ground of part performance, the plaintiff should allege particularly the manner and extent of performance.—*Fowler* v. *Sutherland.*—Filed Jan. 27, 1886.—Cal.

STATUTES—CONSTRUCTION OF—BOND OF DEALER IN INTOXICATING LIQUOR.—In construing an amendment to a statute,consideration should be given to the prior slatute and to the construction already given to the same, and also the latest expression of the legislative will on the subject. An action may be maintained on the bond of a liquor dealer who fails to make returns within five days after the last Saturday in June.—*State* v. *McEntee.*—Filed March 19, 1886.—Ia.

STATUTE OF FRAUDS—PURCHASE OF PROPERTY—PAYMENT TO BE MADE IN SERVICES.—The statute of frauds applies to a contract for the purchase of property where payment is to be made in labor, the same as though payment was to be made in money. Where a husband and wife made a parol contract agreeing to bequeath to a young girl their property both real and personal at their death and to treat her as their own child and heir if she lives with them. *Held* void under the statute of frauds.—*Wallace, Adm'r* v. *Long.*—Filed March 5, 1886.—Ind.

STATUTE OF LIMITATIONS—EFFECT OF PARTIAL PAYMENT ON A JOINT AND SEVERAL NOTE.—Where a promissory note is made by two or more persons jointly, a partial payment by one of the makers will bar the running of the statute as to himself, but not as to the other joint maker or makers.—*Willoughby* v. *Irish.*—Filed March 9, 1886.—Minn.

STREET RAILWAY—FRANCHISE GRANTED BY A CITY—SUBJECT TO REASONABLE REGULATIONS BY THE CITY.—A grant by a city to a street railway corporation to operate a street railway on streets in the city does not bar the city from a reasonable control and regulation of manner of conducting and running the road. Such grants must be construed strictly against the grantees and in favor of the public.—*Wyandotte* v. *Corrigan.*—Filed March 5, 1886.—Kans.

SUIT TO QUIET TITLE—CROSS-COMPLAINT—SUFFICIENCY OF.—In an action to quiet title, where the cross complaint alleges that the cross-complainant is the owner of the real estate described in the complaint, and that the adverse interest claimed is unfounded,it is good on demurrer.—*Johnson* v. *Taylor.*—Filed March 24,1886.—Ind.

SUPPLIES FOR COUNTY—COUNTY BOARD MUST LET TO LOWEST BIDDER—REJECTION OF ALL BIDS—MANDAMUS.—It is the duty of the county board to advertise for bids for furnishing supplies for the county where the amount exceeds $200 and to let the contract to the lowest bidder who can give adequate security. The board may however reject all bids and if done in good faith the lowest bidder cannot compel an acceptance of his bid. The board may be compelled by one or more tax-payers to take the proper steps to let contracts for supplies.—*State* v. *Board of Saline County.*—Filed March 3, 1886.—Neb.

SUPPLYING LOST COPY OF COMPLAINT—ACTION ON APPEAL BOND.—Where a case has been appealed from a justice's court and it appears that the original complaint has been lost, the plaintiff may file a copy by permission of the court. Where the action is on an appeal bond and the bond is not set out in the complaint, the bond cannot

be put in evidence without first proving its execution.—*Bauer* v. *Wasson*.—Filed Feb. 17, 1886.—Mich.———

SURETIES OF EXECUTOR——CONTINUING THE BUSINESS OF THE DECEDENT—LIABILITIY OF EXECUTOR.—Where a testator desired his executor to continue his business for a definite period, if the executor does so continue the business, he is charged with returning at least the amount invested in the business at the time he assumes charge of the same, and on failure to do so he is liable on his bond for the deficit.—*State* v. *Wilmer Adm'r*.—Filed March 11, 1886.—Md.

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SURRENDER OF LEASE—PROVISIONS PROVIDING FOR THE SALE OF PREMISES AND PAYING LESSEE FOR IMPROVEMENTS.—Where a lease contained provision that if the owner should sell the premises during the term of the lease then the owner should pay the lessee for the improvements which he made, and the owner did sell and offered to pay for improvements as stipulated and demanded a surrender of the premises. *Held* that the terms of the lease did not necessarily mean that a surrender should be made by the lessee.—*Rudolph, Adm'r* v. *Helps*.—Filed Feb. 26, 1886.—Cal.

SWAMP LANDS—COUNTY NOT BOUND TO SELL TO ANY ONE WHO OFFERS THE ESTABLISHED PRICE.—After the county of Mills had acquired title to certain swamp lands, a party made application to purchase a certain eighty acre lot, and tendered to the clerk of the board of supervisors the fixed price of the land. The board declined the offer and refused to sell the said land. The applicant notwithstanding this refusal took possession of the land and made improvements on the same. Subsequently the board conveyed the land to another. *Held* that the conveyance of the board was valid and passed a good title.—*C.B.&Q. Ry Co.* v. *Jackson*.—Filed March 17, 1886.—Iowa.

TAXATION—FARM LANDS WITHIN CITY LIMITS—NOT SUBJECT TO MUNICIPAL TAXATION.—Land which has been annexed to a city, which is used for horticultural purposes and which has not been platted, is not subject to municipal taxation. The fact that the owner does business in the city as a merchant and resides on the land does not authorize taxation. Where the owner makes payment of city taxes on such lands, under protest, he may recover the same by an action for that purpose.—*Winzer* v. *City of Burlington*.—Filed March 17, 1886.—Iowa.

TAXES WRONGFULLY ASSESSED—PAID UNDER PROTEST— RECOVERY.—The personal property of a corporation being assessed under the general description of "personal property," is not according to the requirements of the statute, as only certain kinds of personalty owned by a corporation is subject to taxation. Such tax being wrongfully assessed and paid without protest cannot be recovered, but if paid under protest may be recovered. The assessment roll should show the particular kind of personal estate assessed.—*Dunnel M'fg Co.* v. *Newell, Treas.* —Filed Jan. 30, 1886.—R. I.

TAX DEED—NOTICE TO REDEEM—BY WHOM AFFIDAVIT OF SERVICE MUST BE MADE. —An affidavit of service of notice to redeem from a tax sale should be made by the owner of the certificate or the one who at the proper time shall be entitled to demand a deed. By the holder of a cerificate is meant the owner of it, although the actual possession of the certificate is had by another. The purchaser at tax sale acquires no interest in the land until he obtains a deed therefor.—*Rice* v. *Bates*.—Filed March 19, 1886. —Ia.

TAX DEED—AFFIDAVIT OF PUBLICATION OF NOTICE OF EEDEMPTION—WHAT IS REQUIRED.—An affidavit of publication of notice of the expiration of the time for redemption must state when the publication was made and in what paper, or it will be insufficient, and a tax deed issued on such insufficient notice is void. One who purchases land at tax sale and pays subsequent taxes,

must be reimbursed for the same when redemption is made.—*Kessey* v. *Connell.*—Filed March 20, 1886.—Ia.

TAX DEED—PAYMENT MUST BE MADE WITHIN TEN DAYS FROM SALE—CLOUD ON TITLE.—If payment is not made within ten days from date of sale for taxes, the collector must make conveyance to the city or town to which the tax is due. If he make a deed to the purchaser after the expiration of the time prescribed, the deed is void, but it will constitute a cloud on the title for the removal of which an action may be had.—*Holt* v. *Welch.*—Filed Jan. 11, 1886.—Mass.

TAX LAWS—PARSONAGE EXEMPT—THE WORDS "LEASE" AND "RENT" DEFINED.—Under Section 1038 Title 3 of the revised statutes, a parsonage owned by a church corporation is exempt from taxation. The verb "lease" has reference to the act of a lessor, while the verb "rent" has a broader signification and may refer to the act of the lessor or the lessee.—*Gray* v. *LaFayette Co.*—Filed March 16, 1886.—Wis.

TESTAMENTARY LAW—WHEN A LEGACY VESTS IN THE BENEFICIARY—A residuary legacy does not vest in the beneficiary until after administration, but in the executors subject to distribution. A residuary legacy having been paid in advance of other bequests, and uopn settlement the estate is insufficient to satisfy the bequests made, that paid to the residuary legatee may be recovered from the estate of the executor.—*Gaudry, Adm'r* v. *Estate of Henry.*—Filed March 16, 1886.—Wis.

TRADE-MARK—WHAT MAY BE USED AS SUCH.—It is well settled that no words which are merely expressive of color, finish, or form, or mere advertisements or directions, can be used as a trade-mark. The words "health preserving" preceding the word "corset" cannot be used as a trade-mark. No words which are merely descriptive of the effect to be produced by an article, can be used as a trade-mark.—*Ball* v. *Sigel.*—Filed Jan. 25, 1886.—Ill.

TRANSCRIPT—STENOGRAPHER'S FEES—WHEN TAXABLE.—When the judge in the trial court refuses to make an order requiring the stenographer to file a copy of the testimony in the case, the party appealing, if he prevails in the higher court, is entitled to have the expense of obtaining the transcript taxed as part of the costs.—*Bradford* v. *Vinton.*—Filed Feb. 17, 1886.—Mich.

TREASURER OF SCHOOL-DISTRICT—ACTION TO OUST—ALLEGATIONS IN COMPLAINT.—In an action to oust the treasurer of a school-district from his office it is not necessary to allege the fact of the organization of the school-district in the complaint. The court will take judicial notice of that fact. A general allegation that defendant is exercising the duties of the office is sufficient. One elected to an office cannot be deprived of such office by the party whose duty it is to approve his bond, if the officer elect has done all that the law requires of him to qualify for the duties of the office.—*State* v. *Dahl.*—Filed March 16, 1886.—Wis.

TRESPASS—WHAT PLAINTIFF MUST PROVE—POSSESSION OR TITLE OF RECORD—An action of trespass brought by one who has no paper title, and as evidence of possession he shows that he has for some length of time occupied the land for the purpose of drying cut grass, cannot be maintained by such evidence of possession. One cannot acquire title to an uninclosed tract of land by obtaining a colorable paper title and then going upon the land occasionally to cut grass.—*Price* v. *Brown.*—Filed March 2, 1886.—N.Y.

TRIAL—REFERRING THE JURY TO PLEADINGS—LIABILITY OF A CITY TO KEEP ITS SIDEWALKS IN GOOD REPAIR.—The obligation of a city to keep its sidewalks in good and proper condition is not affected by the extent of the walks, and it is error to admit evidence showing the aggregate number of

miles of sidewalk to be kept in condition. It is error to direct the jury to refer to the pleadings in the case to determine the issue. —*Lindsay* v. *City of DesMoines*.—Filed March 18, 1886.—Ia.

TRIAL—JURY ARE JUDGES OF THE LAW AND FACTS—MAY DISREGARD THE INSTRUCTIONS OF THE COURT.—The jury may disregard the instructions of the court on law points and adopt their own theory of the law. It is however the duty of the court to explain to the jury in a case of homicide, what constitutes murder. The simple reading of the statute to them is not sufficient. *Stase* v. *Meyer*.—Filed April 5, 1886.—Vt.

TRIAL—ASSAULT WITH ATTEMPT TO KILL. —Upon a trial of an indictment for an assault with an attempt to commit murder, if it be shown that the prosecuting witness first attacked the defendant, it is competent to show threats previously made by witness as bearing upon the character of the attack. —*Leverich* v. *State*—Filed Feb. 9,'86.—Ind.

TRIAL—INSTRUCTIONS—HOW CONSTRUED —Instructions must be construed as a whole. Where one sentence, if taken alone, would be erroneous, but the instruction as a whole states the law correctly, the judgment will not be reversed on that ground.—*Conrad* v. *Kinzie*—Filed Feb. 11, 1886.—Ind.

TROVER—GOODS DELIVERED BUT NOT ACCEPTED—ACTION OF TROVER FOR THE GOODS AGAINST ONE WRONGFULLY TAKING THE GOODS.—A party having delivered railway ties, and before acceptance by the party for whom they were delivered, they are wrongfully taken by a third party. *Held* that the party delivering them and not the party for whom they were delivered, might maintain an action of trover and conversion for the same.—*Stough* v. *Stephani*.—Filed April 7,1886.—Neb.

UNDUE INFLUENCE—CONVEYANCE OF LAND—GRANTOR REMAINING IN POSSESSION AFTER EXECUTION OF A WARRANTEE DEED—NOTICE.—Undue influence exerted upon an uncle by a neice by reason of which he conveys to her certain real estate, she promising to reconvey the same, may be sufficient grounds for cancelling the deed, and when the grantor remained in possession after execution of the deed, it is held sufficient to put a purchaser upon inquiry before taking title from the grantee.—*Hansen* v. *Berthelsen*.—Filed March 31, 1886.—Neb.

VACANCY IN COUNTY BOARD—POWER OF THE BOARD TO REMOVE A COUNTY OFFICER —PROCEEDINGS TO COMPEL A SURRENDER OF BOOKS AND PAPERS.—Where a county board upon complaint and hearing ousts a county officer and appoints a successor, the party ousted may be compelled to surrender the books and papers of the office to his successor by mandamus proceedings. Where such removal is had and a supersedeas is issued, this does not stay proceedings so as to enable the officer ousted to hold over until final determination of the case.—*State* v. *Meeker*.—Filed March 31, 1886.—Neb.

VALIDITY OF GENERAL ASSIGNMENT—MORTGAGES EXECUTED WITHIN SIXTY DAYS PRIOR—A BADGE OF FRAUD.—Where a debtor executes mortgages and within sixty days thereafter makes a general assignment for the benefit of creditors, in which he recognizes the mortgages as valid, the presumption is raised that the mortgages were made with intent to defraud creditors, and will be set aside.—*Backhous* v. *Sleeper, Garnishee*. —Filed April 6, 1886.—Wis.

VENDOR AND VENDEE—QUIT-CLAIM DEED OF A CONTINGENT ESTATE, A CONTRACT TO CONVEY.—A party having a contingent interest in an estate, executed a quit-claim deed for the same before the estate became vested, and subsequently executed a warrantee deed for the same land, also before the estate became vested. After the estate vested in him he made another deed confirming the prior quit-claim deed he made.

Held that the quit-claim deed made before the vesting of the estate was a contract to convey and will be upheld in equity as such. —*Wilcox* v. *Daniels*.—Filed Jnly 9, 1885. —R. I.

VENDOR AND VENDEE—RIGHTS OF LESSEE —LESSEE IN POSSESSION, NOTICE TO VENDEE OF SUBSISTING EQUITIES.—When one has leased premises for a term of years, he cannot void the lease by selling the premises and antedating the deed so as to make the deed antedate the lease. The lessee being in possession of the premises is notice to the vendee of subsisting equities.—*Leebrick* v. *Stahle*.—Filed April 7, 1886.—Ia.

WATER COURSES—RIGHT OF DIVERSION AND APPROPRIATION BY INDIVIDUAL—REGULATION OF BY LEGISLATURE.—A person may use a natural depression in the land surface for a reservoir, or the bed of what has been a stream, but in appropriating water in this way he cannot prejudice the rights of others without incurring liability. The legislature has the power to regulate the manner of appropriating unused water, for useful purposes.—*Reservoir Co.* v. *People*.—Filed Jan. 29, 1886.—Cal.

WAYS—ALTERATION IN THE DECREE OF COUNTY COMMISSIONERS FINAL.—Where the selectmen of a town petition the county commissioners for a change in a highway, and the inhabitants of the town have a chance to be heard in opposition to the change, the decree of the commissioners is final, and not appealable by an inhabitant of the town who alleges himself aggrieved.—*Chandler* v. *Railroad Com'rs*.—Filed Feb. 29, 1886.—Mass.

WILL—REST AND RESIDUE FOR THE SUPPORT OF MY DAUGHTER C.—CONSTRUCTION —Where a testator gave to one daughter one-half of a farm, and bequeathed to another daughter "the rest and residue etc., for the support of my daughter C.," it is held that the residue was bequeathed in trust for C., and that after the death of C. the beneficiary of the other half of the farm took a fee in remainder.—*Buffington* v. *Maxam*.—Filed Jan. 11, 1886. —Mass.

WILL—REVOCATION BY MARRIAGE.—Where a *feme sole* executes a will and subsequently marries, it is held that her marriage is a revocation of her will. In Michigan it is otherwise held.—*Blodgett, Ex'r* v. *Moore*.—Filed Jan. 26, 1886.—Mass.

WILL—CONDITIONAL BEQUEST OF THE EXCESS OVER A CERTAIN SUM—APPRECIATION OF THE ESTATE AFTER APPRAISEMENT AND BEFORE SETTLEMENT.—Where a testator bequeathed to members of his family certain amounts and added a provision in the will that if the estate exceeded $100,000 such excess should go to the trustees of a certain church, and the appraisement of the estate fixed its value at less than $100,000, but before the estate was settled it had appreciated to $121,000. *Held* that the appraisement fixed the value of the estate and the increase in value belonged to the devisees under the will.—*First Unitarian Soc.* v. *Harrison*.—Filed March 19, 1886.—Ia.

WILL—DEVISE OF FEE SUBSECT TO A LIFE ESTATE—CONSTRUCTION OF WILL—Where a testator devised to his son "the fee, subject to the life estate herein given to his mother," and further provided that if the mother survived the son, at her death the property should be distributed among the heirs of his son as though he had died intestate. *Held* that the son had a good title in fee.—*Dorsey* v. *Fox*.—Filed March 29, 1886.—Pa.

WILL—BEQUEST CHARGED WITH THE MAINTENANCE OF A GRANDSON—CONSTRUCTION.—Where a testator bequeathed his real estate to his son jointly with his wife, and charged his son with the maintainance of a grandson, the son died intestate and the estate went to his brothers. *Held* that the maintenance of the grandson was a charge upon the estate, and one who had supported him subsequent to the death of the devisee,

could maintain an action against the lands for his claim.—*Halstead* v. *Westervelt.*—Filed April 2, 1886.—N. J.

WILL—CONSTRUCTION OF—BEQUEST TO WIDOW CONDITIONAL UPON HER REMAINING UNMARRIED.—A testator bequeathed a portion of his estate to his wife one-half of which she was to forfeit if she remarried, and the remainder to his children share and share alike. The widow remarried. *Held* that the children had a vested interest in the portion bequeathed to them and also in one-half the portion bequeathed to the widow, and the remainder should be held in trust for the widow dnring her life.—*Konvalinka* v. *Geibel.*—Filed Nov. 1885.—N. J.

WITNESS—CROSS-EXAMINATION—DISCRETION OF THE COURT IN LIMITING.—In the cross-examination of a witness it is proper to allow such questions as would tend to show bias, but when questions on a certain point have been answered, and another question is asked which would require a repetition of the answer already given, it is not error to exclude it.—*Clark, Adm'r* v. *Phelps.*—Filed March 5, 1886.—Kans.

WITNESS—COMPETENCY OF ONE WHO CLAIMS A DEBT FOR SERVICES RENDERED TO DECEDENT, IN AN ACTION AGAINST THE EXECUTOR.—In an action against an executor to recover for services rendered to decedent in his lifetime, it is competent for plaintiff to testify as to the value of the services rendered and as to the length of time he was so employed.—*Belden* v. *Scott, Ex'r.*—Filed March 16, 1886.—Wis.

WITNESS—IMPEACHMENT—DEED WHICH PASSES TITLE AFTER GRANTOR'S DECEASE.—Acts of immorality cannot ordinarily be shown for the purpose of impeaching a witness, although in the sound discretion of the court it may be allowed in some cases on cros-examination. An instrument executed for the pnrpose of passing title and does pass title to an estate during the life of the grantor, although the enjoyment of the estate by the grantee is postponed until afer the death of the grantor, is a deed and not a will.—*Spencer* v. *Robbins.*—Filed March 23, 1886.—Ind.

Searles v. *Manhattan Ry Co.*
Filed March 2, 1886.—N.Y.

(Where a person received personal injury and it appears that it may have been caused in two ways only, one of which is by negligence of another, and the other by his own negligence, if the testimony leaves it uncertain in which of the two ways it was caused the action must fail.)

Wise v. *Peœnix Firs Ins. Co.*
Filed Jan. 19, 1886.—N. Y.

(A witness in testifying may use memoranda to refresh his memory.)

Pressly v. *Lamb.*
Filed Jan. 29, 1886.—Ind.

(Where one of two partners makes application to a judge in vacation for the appointment of a receiver, and the other partner appears and files an answer the judge has jurisdiction and the action will be deemed to have been commenced from the date of such appearance.)

Marsh v. *Masterson.*
Filed Feb. 12, 1886.—N. Y.

(One employed by another to receive a portion of the profits of the business as his compensation, is not a partner. Such person having brought an action as a partner for an accounting, and being defeated, is not barred from bringing another action for compensation for his services.)

Marsh v. *Chickering.*
Filed Feb. 12, 1886.—N. Y.

(One employed in lighting lamps, using a ladder furnished him by his employer, and which was in bad condition, of which the employer had notice, cannot recover of the employer for a personal injury received by the breaking of the ladder.)

Stockwell v. *Richardson.*
Filed Feb. 9, 1886.—N. Y.

(A sale of bonds with an agreement to repurchase them at the expiration of a given time at a fixed price, is not a sale but simply a loan of money, placing the bonds as collateral security.)

Evans v. *Evans.*
Filed Feb. 19, 1886.—Ind.

(Change of venue may be had in divorce proceedings as in other actions, not only from one judge to another, but to another county.)

Lockwood v. *Ferguson.*
Filed Feb. 13, 1886.—Ind.

(One who has performed work on a drain cannot enforce his claim by personal action. His remedy is to have his claim placed on the tax list by the auditor.)

Clift v. *Nay.*
Filed Feb. 13, 1886.—Ind.

(If a purchaser has notice of the lien of a mortgagee after part payment has been made he will be held to be a purchaser with notice as to the balance unpaid of the purchase money.)

O'Reily v. *London Assurance Co.*
Filed March 16, 1886.—N.Y.

(Where an insurance agent is authorized by the terms of a policy to renew the same upon payment of renewal premium, the company cannot be held liable for renewal where there was only an oral agreement to renew, and where the agent made no entry on his books of the renewal and where the premium was not paid.)

Woolley v. *Baldwin.*
Filed March 23, 1886.—N.Y.

(A county treasurer is liable for negligence in not performing the duties devolving upon him. In an action against a county treasurer for not collecting interest on a mortgage due over two years, the complaint did not aver that he had any knowledge of the value of the property, or insolvency of the mortgagor, or that he was negligent in not informing himself on the matter. *Held* that the complaint was insufficient.)

In Re Otis. Ex'r.
Filed March 16, 1886.—N.Y.

(A committee of a lunatic, continuing the business for the benefit of the estate of the lunatic, and occupying premises under a lease of the lunatic, the rent of the premises comes under the head of reasonable expenses which must be paid in preference to general creditors.)

Chicago v. *Dalle.*
Filed Nov. 14, 1885.—Ill.

(It is not necessary that a city shall have actual notice of a defect in a sidewalk, to fix its liability for personal injury. It is a duty to keep the sidewalk in repair. The condition of the sidewalk just before and after an accident may be shown as evidence of its condition at the time of the accident.)

Keigwin v. *Drainage Com's.*
Filed Nov. 14, 1885.—Ill.

(An assessment made without authority of law, or where the property is exempt, or where the tribunal making the assessment has acted *ultra vires*, is snbject to an injunction to restrain the collection of the same.)

Pugh v. *Pugh.*
Filed March 9, 1886.—Ind.

(In construing a will the intention of the testator should be drawn from the will itself if it can be. Where a devise is made to the children of a certain party, it cannot be construed as meaning his grandchildren.)

Commonwealth v. *Hobbs.*
Filed Jan. 7, 1886.—Mass.

(In an indictment for poisoning by mixing poison with food, it is not necessary to charge that defendant knew at the time that it was arsenic or a particular kind of poison used.)

Simmons v. *Havens.*
Filed March 2, 1886.—N.Y.

(Where a deed has been executed and

delivered and subsequently destroyed, in an action by the grantee to obtain possession in the absence of the attesting witnesses of the lost deed, the admission of the grantor of the fact of the execution of the deed is sufficient.)

Lenderman v. *Farquharson.*
Filed March 2, 1886.—N. Y.

(The wife and son of a debtor who was sick executed a note in payment of a debt of the husband and father to save him from annoyance while sick, by his creditor. *Held* that the note was without consideration and void.)

Desmond v. *Stebbins.*
Filed Nov. 28, 1886.—Mass.

(A broker employed to procure a purchaser for lands, has performed his contract if he introduces a party to the owner who purchases the land, and he is entitled to his commission on the same.)

Cassidy v. *O. C. Ry Co.*
Filed Feb. 25, 1886.—Mass.

(The taking of land for a railroad includes all the uses to which the company may have occasion to put the same. although these uses were not in contemplation when the land was taken.)

Am. Bible Soc. v. *Price.*
Filed Jan. 27, 1886.—Ill.

(In contesting a will an allegation that the testator was not of sound mind and memory, is sufficient to cover any specific form of unsoundness, unless objected to and more specific allegations demanded, at the proper stage in the proceedings.)

Hook v. *Richeson.*
Filed Jan. 25, 1886.—Ill.

(The rights of co-sureties against their principal cannot be affected by a private arrangement between themselves, the purpose of which is to shift the liability from one to others of the co-sureties.)

U.S. Rolling Stock Co. v. *Wilder.*
Filed Jan. 25, 1886.—Ill.

(It would be error to give instructions embracing an abstract proposition of law not suggested by the evidence. The purpose of instructions is to give a clear statement of the law applicable to the case.)

Commonwealth v. *Welch.*
Filed Jan. 4, 1886.—Mass.

(Conviction may be had for unlawfully exposing liquor for sale if it be shown that defendant kept the liquor with intent to sell, although no actual sale be shown to have been made.)

Commonwealth v. *McCullom.*
Filed Jan. 4, 1886.—Mass.

(In an action for maintaining a nuisance in the sale of liquor, it is competent to show that liquor was kept in an adjoining house, where all the circumstances would indicate that the parties living in the house did not need or keep it for their own use.)

Look v. *Luse.*
Filed Jan. 8, 1886.—Mass.

(In an action against an administrator, where judgment is rendered against the estate of deceased for damages and costs, an execution can issue for damages only.)

Wallace v. *Brooker.*
Filed Feb. 20, 1886.—Ind.

(In a proceeding in bastardy where the case has been continued from term to term and the defendant has never been required to give bond, and has not, in reality, been in actual custody, the court may, at any time, make an order of commitment.)

Martin v. *Blattner.*
Filed March 17, 1886.—Iowa.

(In an action to restrain the sale of intoxicating liquor as a nuisance, the landlord may be joined as a party defendant.)

Boyle v. *State.*
Filed March 4, 1886.—Ind.

(In taking the dying declarations of a man he was asked "What reason, if any, had the man for shooting you.?" He replied

"Not any that I know of, he said that he would shoot my d——d heart out." *Held* admissible. Malice may be implied if the killimg is done without provocation.)

L. E. & St. L. Ry Co. v. *Thomas.*
Filed March 2, 1886.—Ind.

(In an action for the injuring or killing of cattle by a railway company, plaintiff must show that the cattle got upon the track at some point where it was insecurely fenced, or his action will fail.)

Hackett v. *State.*
Filed Feb. 20, 1886.—Ind.

(Although a device may be patented, the state has a right to regulate its use when used in the capacity of a common carrier, or when applied to a public use. A telephone company is a common carrier and the state may regulate the charges for service)

Lamb v. *Lamb.*
Filed Feb. 19, 1886.—Ind.

(No presumption of unsoundness of mind can be drawn from the fact that a testator gave to one of his children a much larger portion than to others. If he did make an unnatural disposition of his property the fact may be weighed by the jury.)

Bass v. *Elliott, Adm'r.*
Filed March 5, 1886.—Ind.

(A change of venue may be had in drainage proceediugs. The construction of a ditch or drain should not be ordered unless it is found that the public health will be improved, the streets or highways benefitted, or that the drainage will be a public utility.)

Tuttle, Gaardian v. *Northrup.*

(Where a guardian makes default in the payment of money to his ward, and during the execution of the trust the original bondsmen have been discharged and new ones accepted, upon final settlement the latter bondsmen are liable, although the defalcation occurred whilst the original bond was in force.)

Payne v. *Thompson.*
Filed March 23, 1886.—Ohio.

(A husband and wife cannot enter into a contract of partnership with each other for the purpose of carrying on the business of trading.)

Whitney v. *Gross.*
Filed Oct. 24, 1885.—Mass.

(In an action for damages for an injury caused by driving a horse and wagon overloaded, it is not competent to show that the same horse and wagon had previously been driven in safety over the same road equally overloaded.)

Talbot v. *City of Taunton.*
Filed Jan. 11 1886.—Mass.

(A railway company bnilding a bridge over a street and an injury being caused by it not being sufficiently high, the company is liable. If after the bridge is built the grade of the street is raised and an injury occurs by reason of insufficient room beneath the bridge, the city is responsible.)

Hasseld v. *Seyforth.*
Filed March 9, 1886.—Ind.

(When personal property is omitted from the schedule and subsequently surrendered to the trustee, it cannot be seized on execution after being surrendered to the trustee.)

Carmody v. *State.*
Filed March 9, 1886—Ind.

(A deputy sheriff is presumed to have authority to take and approve a recognizance. A court may make a general order fixing the amount of bail required in cases of a certain class.)

Young v. *Sellers.*
Filed March 10, 1886.—Ind.

(Where reviewers change the assessments for building a ditch, one who is not affected by the new allotment cannot complain.)

Kurtz v. *Carr.*
Filed March 11, 1886.—Ind.

(An adjudication in which all matters at issue between the parties were determined,

or ought to have been determined, is a bar to another action for the same matter between the same parties.)

Somnes v. *Ross.*

Filed March 12, 1886—Ind.

(Where an attachment has been issued, the taking of a personal judgment is equivalent to a dismissal of the attachment, and a breach of the attachment bond.)

Barnett v. *Harsburger.*

Filed March 13, 1886.—Ind.

(The general rule is that a married woman is not under legal disability by reason of coverture, but a husband and wife cannot contract with each other in law, yet such contracts are sometimes upheld in equity.)

Cassady v. *Miller.*

Filed Maach 13, 1886.—Ind.

(In a collateral attack on a judgment on the ground of want of notice of the proceedings had, the complaint must allege such facts as will overcome the presumption of regularity and jurisdiction of the person.)

Ditch v. *Sennote.*

Filed Jan. 26, 1886.—Ill.

(The failure to assign errors upon the record is a defect of substance, as there is no issue presented to the court for review and the appeal will be dismissed.)

Barnes v. *Marshal.*

Filed Feb. 25, 1886.—Cal.

(A riparian owner may protect his land from a threatened change in the channel, by building a bulk-head as high as the original bank.)

Daggett v. *Dunne.*

Filed March 9, 1876.—Cal.

(In the absence of a special appropriation for the purpose, and no funds in the treasury unappropriated, the comptroller cannot be compelled to draw a warrant in payment of the salary of an employe of the state.)

THE IRON HEART.

Encased in every human frame is a wonderful machine, or force pump, which drives the blood through the arteries to all parts of the body, from whence it is returned to the machine through the veins. This machine is the heart, and together with the arteries, veins and capillaries, constitutes the medium through which circulation is maintained in the system.

This wonderful human arrangement is of no more vital importance to man than are the railroads to the prosperity of the country—they are the circulating mediums of the nation's progress. Of them, owing to its geographical position, great length of lines, the large number of important cities it reaches, and the productive territory which to traverses, the Burlington Route, C. B. & Q. R. R., may, in comparison with the physiological structure mentioned, be called the "Iron Heart." Like its prototype in the flesh, it receives and emits a ceaseless flow of material for the maintenance of vitality. To and from Chicago, Peoria, or St. Louis on the east, and Council Bluffs, Omaha, St. Joseph, Atchison, Kansas City and Denver on the west, it circulates all classes of travel between the prominent cities of the East, and intermediate points, on the one hand, and the City of Mexico, Portland, San Francisco and all Pacific Coast points on the other. From many of its numerous terminals it is also a strong factor in the maintenance of travel between prominent points north and south,—thus literally maintaining a circulation of commerce in all directions.

Unlike many human hearts, the condition of this one of iron is always strong and healthy, as the Burlington Route maintains elegant equipment, perfect roadbeds, steel tracks, and, at important points, interlocking switches, besides adopting every modern device that will add to the comfort or safety of its patrons. For tickets, rates, or general information regarding the Burlington Route, call on any railroad ticket agent in the United States or Canada, or address PERCEVAL LOWELL, Gen'l Passenger Agent, C. B. & Q. R. R., Chicago, Ills. t-f-n

READ THE FOLLOWING EXPRESSIONS OF APPROVAL.

From JNO. BARTON PAYNE, Attorney and Counselor. CHICAGO, Feb. 25, 1886.

GENTLEMEN: I have examined the CHICAGO LAW JOURNAL, and am much pleased with the plan you have adopted. Your journal places before the profession in a compact and convenient manner, the cream of the current decisions of the courts of last resort, in the important states of the union. I hope you may be abundantly successful.

Respectfully, JNO. BARTON PAYNE.

From JOHN GIBBONS, Attorney at Law. CHICAGO, Feb. 25, 1886.

GENTLEMEN: As a reader of your LAW JOURNAL, it affords me great pleasure in commending it to the profession as a publication which should be liberally patronized Its reviews of recent decisions are excelled by no other journal with which I am familiar. To a lawyer actively engaged in the practice, one number is worth the subscription price for a whole year. Very truly yours, JOHN GIBBONS.

From HON. HENRY BOOTH, L. L. D., Dean of the Faculty of the UNION COLLEGE OF LAW. CHICAGO, Feb. 25, 1886.

GENTLEMEN: Having examined several numbers of your LAW JOURNAL, I can cheerfully bear testimony to the excellence of your plan. The current decisions of the courts of last resort, in a majority of the states of the union, are given under appropriate heads in alphabetical order, for easy reference. A publication which renders this service for the profession monthly, at the trifling cost of $3.00 per annum, deserves, and will doubtless receive due encouragement. Very truly, HENRY BOOTH.

From COL. H. F. VALLETTE, Attorney and Counselor. CHICAGO, Feb. 26, 1886.

GENTLEMEN: I have examined with great care the numbers of the CHICAGO LAW JOURNAL, heretofore issued by the Chicago Law Publishing Company, and have had to refer to it for index to cases that I was otherwise unable to find. The JOURNAL serves as a complete index to all the cases recently decided in the several states, which are of importance to a lawyer in active practice. It is well worthy of the patronage of the legal profession. H. F. VALLETTE, firm of VAN ARMAN & VALLETTE.

From DEWITT C. JONES, Attorney at Law. CHICAGO, Dec. 10, 1886.

GENTLEMEN: I have carefully examined the December number of the CHICAGO LAW JOURNAL, and I verily believe such a publication will soon be regarded as an actual necessity by every practicing lawyer. In reading this number, I find a case announcing a principle which I have searched for in vain elsewhere, and being exactly in point, in a case I have now in hand, its value to me at this time can hardly be estimated. It would be almost impossible for a lawyer to read your monthly collection of recent decisions without finding, in the course of a year, important cases which would be worth more than ten-fold the price of the Journal. Yours etc., DEWITT C. JONES.

From W. L. SNELL, Attorney at Law. CHICAGO, Dec. 28, 1886.

GENTLEMEN: Since subscribing for the CHICAGO LAW JOURNAL, the more I examine it the better I am pleased. In searching for authorities on any given subject, it is of great value, as it brings in review a large number of decisions in such brief space. I know of no publication so comprehensive and useful and yet so cheap. Resp'y, W. L. SNELL.

From THOMAS E. WILSON, Attorney at Law. SANFORD FLA., March 15, 1886.

GENTLEMEN: Please send me January number of the CHICAGO LAW JOURNAL, which I have in some manner lost. I think too much of the JOURNAL to lose one of the numbers. Yours truly, THOMAS E. WILSON.

From CHARLES L. FREDERICK, Attorney at Law. FOND DU LAC Wis., Mch. 15, 1886.

GENTLEMEN: I have examined March number of your LAW JOURNAL, and am much pleased with it. Such enterprise must succeed. Inclosed find order for same.

Yours truly, C. L. FREDERICK.

The Chicago Law Journal.

CHICAGO, JUNE, 1886.

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Chicago Law Publishing Co.

ACCORD AND SATISFATION—PAYMENT IN MONEY AND PERSONAL PROPERTY—EFFECT OF.—The rnle that the payment of a smaller sum than admitted due, in full satisfaction of the same, is not a good plea, does not apply when payment has been made partly in money and partly by the transfer of personal property. The transfer of personal property is taken to be in full satisfaction.—*Neal* v. *Handley*.—Filed March 27, 1886.—Ill.

ADULTERATION OF MILK—ACTION FOR SALE OF—SOLD FROM TANK MARKED "SKIM-MILK."—On the trial on an indictment for selling adulterated milk it was shown that defendant kept this said milk in, and sold it from a tank marked "skim-milk". *Held* that evidence that the milk was thus was a good defense to the indictment.—*Commonwealth* v. *Tobias*.—Filed Feb. 24, 1886.—Mass.

ADVERSE POSSESSION — BUILDINGS EXTENDING OVER THE LINE—EXCAVATING ADJACENT TO A BUILDING.—Where the owner of a lot erects a building, and inadvertently builds four inches over the line,on an adjoining lot, and the owner of the adjoining lot for years is not aware of the encroahcment,the owner of the building cannot claim title to portion of ground wrongfully occupied, by adverse posession. The owner of a lot adjoining one on which a building is erected is not prevented from excavating preparatory to building,by reason of damages which may ensue to the adjacent building, nor is he liable for any damages which may ensue.—*Winn* v. *Abeles*.—Filed April 9, 1886.—Kans.

APPEAL.—NOTICE OF—DESCRIPTION OF JUDGMENT.—A notice of appeal must be addressed to the adverse party and inform him of the fact of appeal. A description of the judgment by stating the court, the names of the parties in the case, the date of the judgment and for what it was rendered, is sufficient.—*Nappach* v. *Zordan*.—Filed March 10, 1886.–Oregon.

APPEAL— QUESTION OF FACT DETERMINED BY THE COURT NOT REVIEWABLE.—

Where both parties treat the case as presenting questions of law, and do not request submission to the jury, the judgment cannot be assailed on appeal, on the ground that there were questions of fact which ought to have been submitted to a jury. The finding of facts by the trial court cannot be reviewed on appeal, if there is any evidence in support of the findings.—*Provost* v. *McEncræ.*—Filed March 26, 1886.—N. Y.

APPEAL—ORDERS IN PENDING ACTION—CANNOT BE REVIEWED UNTIL AFTER FINAL JUDGMENT IN THE CASE,—Where an appeal is taken from a justice of the peace, to the district court, and a motion being made for dismissal of the appeal and denied, the ruling of the court in denying the motion is not subject to review by the supreme court while the action is pending in the district court.—*Anderson* v. *Higgins.*—Filed April 9, 1886.—Kans.

ASSIGNMENTS FOR BENEFIT OF CREDITOTS—CONCURRENT JURISDICTION OF COUNTY AND CIRCUIT COURT.—In the matter of assignments for the benefit of creditors the circuit court and county court have concurrent jurisdiction. When the jurisdiction of the county court has attached the circuit court cannot interfere. Under special circumstances a court of equity may interpose to prevent a failure of justice.—*Hanchett* v. *Waterbnry.*—Filed March 27, 1886.—Ill.

ASSIGNMENT FOR BENEFIT OF CREDITORS—CONTINUING THE BUSINESS—DUTY OF ASSIGNEE.—It is the duty of an assignee of an insolvent to convert the property into cash without unnecessary delay and apply the same to the payment of creditors. A majority of the creditors cannot authorize the assignee to continue the business of the assignor, nor can they defeat an injunction prayed for by a single creditor to restrain the continuance of the business.—*Wilhelm* v. *Byles.*——Filed April 15, Mich.

ASSUMPSIT—IMPLIED CONTRACT—CORPORATION USING A PATENTED INVENTION PATENTED BY A DIRECTOR OF THE COMPANY.—Where a patented invention was used by a corporation, of which the patentee was a director, the question whether it was used by his consent, with or without compensation, is a question of fact to be submitted to the jury..—*Dean* v. *Hodge, Assignee.*——Filed April 9, 1886.—Minn.

ASSUMPSIT—QUANTUM MERUIT—CONTRACT AS TO PRICE.—In an action of assumpsit, to recover on a quantum meruit, where the defendant sets up a contract at a fixed price, *held* that the plaintiff is bound to establish by the whole evidence, his claim of what the services were reasonably worth. He cannot recover if the whole evidence leaves it it doubt as to whether there was a fixed price agreed upon or not.—*Phipps* v. *Mahon.*—Filed April 2, 1886.—Mass.

ATTACHMENT—AFFIDAVIT FOR, MADE BY PLAINTIFFS ATTORNEY.—Where an affidavit for a writ of attachment is made by the plaintiff's attorney, the presumption is that it is made "on behalf of the plaintiff" and the plaintiff is sufficiently identified although not named in the affidavit. In such case upon a motion to quash the plaintiff is entitled to frame an issue and contest the matter outside the record.—*Stringer* v. *Dean.*—Filed April 29, 1886.—Mich.

BANKS—DEPOSIT IN SAVINGS BANK—CHANGE IN BY-LAWS WITHOUT NOTICE TO DEPOSITOR.—Where money was deposited in a savings bank and the by-laws then in force provided for the method of withdrawing deposits, and subsequently the by-laws were changed, of which the depositor had no notice, and the money being fraudulently drawn by a person not entitled to it, *held* that the bank was liable to the depositor for the amount of the deposit.—*Kimins* v. *Five Cent Savings Bank.*—Filed Jan. 12, 1886.—Mass.

BANKS AND BANK OFFICERS—ALTERATION OF RECORDS OF THE BANK—LIABILITY OF THE BANK FOR FRAUDULENT TRANSFER.—

Where the treasurer of a savings bank fraudulently assigned a mortgage where, the records of the bank had been fraudulently altered so as to show his authority to assign the mortgage, and the record was relied on by the purchaser as a correct record of his authority, it is *Held* that the bank must suffer the loss and not the assignee, consequent upon the treasurer's fraudulent act.—*Holden* v. *Phelps.*—Filed April 1, 1886.—Mass.

BOND FOR JAIL LIBERTY—STATUTE OF LIMITATIONS AS APPLIED TO SUCH BOND.—In an action on a bond given for the liberty of the jail-yard, defendants pleaded the statute of limitations, to which the plaintiff replied that they did not know of the escape for sometime after it occured. *Held* that the statute began to run from the time of the escape and ignorance of the escape was no excuse for the plaintiff.—*Pearce et al* v. *Curran.*—Filed March 31, 1886.—R. I.

BOUNDARIES—ESTABLISHED BY HIGH-WATER MARK—ACCRETIONS.—The grantee of land bounded in part by water, where the boundary line is ffxed by the line of high-water mark, at the time of making the deed, fixes the boundary line. Should that line be subsequently changed by accretions or by encroachments of the water upon the land the benefits or damages accrue to the owner of the land.—*Nixon* v. *Walter.*—Filed April 7, 1886.—N. J,

BUILDING CONTRACT—ARCHITECT'S CERTIFICATE—WAIVER OF BY OWNER—Where a building contract provides that no payment shall be made until the architect certifies that it is due, and that the last payment shall not be due until the architect certifies that the building has been fully completed, the owner may waive the production of such certificate by accepting the house without such certificate.—*Smith* v. *Alker.*—Filed March 26, 1886.—N. Y.

CARRIER FOR HIRE—TRAVELING ON A FREE PASS—LIMITATION OF LIABILITY OF THE CARRIER.—Where a railway company issues a free pass, which has printed thereon the stipulation that the holder assumes all risk of accident or injury while traveling by the use of the same, and the holder is injured while traveling on the company's train, he cannot recover damages for the injury. This rule applies although the accident was caused by gross negligence of the employes of the company.—*Griswold* v. *N. Y. & L. E. Ry Co.*—S. C. com.—Kans. Law Journal, April 24, 1886.

CARRIER OF PASSENGERS — CARRYING PASSENGERS ON A FREIGHT TRAIN IN VIOLATION OF RULE—LIABILITY OF COMPANY FOR INJURY.—Where a railway company, by a general rule, prohibited the carrying of passengers on a freight train, and yet the conductor of a freight train permitted passengers to travel on the train, it is *held* that where a passenger was injured while thus traveling the company was liable for damages for the injury.—*St. J. & W. R. Co.* v. *Wheeler.*—Filed April 9, 1886.—Kans.

CHANGE OF VENUE—WHEN IT SHOULD BE GRANTED—THE DISTRICT JUDGE AS A WITNESS.—Where a motion for change of venue is made it should not be granted unless a legal cause for a change be clearly shown. If the motion is supported by a general affidavit, in which the affiant avers that he believes the judge before whom the motion is made is a material witness, and the judge has personal knowledge that he is disqualified to sit in the case, it is no error for him to grant the change.—*Gray* v. *Crocket.*—Filed April 9, 1886.—Kans.

CHANGE OF VENUE—CONVENIENCE OF WITNESSES—RIGHT OF SUBSTITUTED DEFENDANT.—A defendant is not entitled to a change of venue on the ground of convenience of witnesses until after answer filed. One who is involuntarily substituted as defendant is entitled to have the venue changed to the county in which he resides.—*Howell* v. *Furnace Co.*—Filed March 26, 1886.—Cal.

CHATTEL MORTGAGE—SALE OF MORTGAGED PROPERTY BY MORTGAGOR—PAROL TESTI

MONY AS TO CONSENT OF MORTGAGOR.—The selling of personal property by the owner, who has mortgaged the same, without the consent of the mortgagee, is constituted larceny by statute. Where one is thus charged with larceny in an action, he may set up and prove, by oral testimony, that the assent of the mortagee was given orally at the time the mortgage was delivered. When the consent of the mortgagee has been fairly obtained, the mortgagor cannot be convicted of larceny.—*Walker* v. *Camp.*—Filed April 22, 1886.—Iowa.

CHATTEL MORTGAGE—SUFFCIENCY OF THE DESCRIPTIÓN OF THE NOTE,—Where a chattel mortgage is given to secure the payment of a prommissory note, it is sufficient if the note be so described that it can be identified as the note in question. Where the property is described as "one portable saw-mill," parol evidence may be introduced to show what attachments properly belong as a part of the saw-mill.—*Webber* v. *Illsing.*—Filed April 6, 1886.—Wis.

CHATTEL MORTGAGE—LEVY AND SALE OF MORTGAGED GOODS—RIGHTS OF MORTGAGEE —A constable may levy upon mortgaged goods, and may take possession of the same and sell them, but before he delivers them to the purchaser he must discharge the lien of the mortgage.—*State ex rel Jessup* v. *Milligan.*—Filed March 27, 1886.—Ind.

COMPLAINT—RECOVERY OF MONEY PAID —BURDEN OF PROOF.—In an action for the recovery of money paid, the complaint must allege facts justifying recovery. If fraud is relied upon it must be alleged. If the allegations are traversed plaintiff must prove the facts, otherwise his action will fail.—*Adams, Adm'r* v. *Smith.*—Filed March 20, 1886.—Oregon.

CONTRACT MADE ON SUNDAY—LEGALITY MUST BE PUT IN ISSUE BY PLEACINGS—DAMAGES FOR LEAVING EMPLOYER.—In an action by an employe for wages, the fact that the contract between master and servant was made on sunday cannot be put in issue unless raised by the pleadings, and the employer cannot off-set damages on account of damages arising from his servant leaving him at a time when work was pressing.—*Reich* v. *Bolch.*—Filed Apeil 7, 1886.—Iowa.

CONTRACT—SUBSCRIPTION TO BUILD A CHURCH—SEVERAL LIABILITY OF SUBSCRIBERS.—Where subscriptions for building a church are obtained, and by the conditions of the subscription paper, the funds are payable to a party named therein, such party is trustee of a special trust and may maintain an action for the same as trustee, without joining the *cestui que trust.* Each subscriber is severally liable for the amount subscribed, although the contract be in terms joint.—*Landwerlen* v. *Wheeler.*—Filed March 23, 1886.—Ind.

CONTRACT—RULES OF CONSTRUCTION—EVIDENCE—DEVILERY OF SECOND HAND MACHINERY WHEN NEW IS ORDERED.—Where one signs a written or printed order for the purchase of goods, and on the back of said order there is a printed warranty by the seller, of the goods sold, the order and the warranty should be construed together, and the positions of the parties and circumstances under which the contract was made must be considered. Under the general issue defendant may prove that the article delivered was not the article purchased.—*Grier* v. *Cole.*—Filed April 8, 1886.— Mich.

—CONDEMNATION OF LAND FOR RIGHT OF WAY—LAND ALREADY CONDEMNED BY ANOTHER CORPORATION BUT NOT OCCUPIED.—Land once taken by the state for public improvements which were abandoned and, subsequently a railway company chartered by the state acquired the right of way on said lands from the state, this railway company assign their right of interest to the president of another railway company, to be disposed of at his pleasure, does not estop another railway company from having the property condemned for a right of way, in as much as it is has never been occupied for the purpose for which it was taken and is now held.—*Johnson* v. *F. & M. R. R. Co.*—Filed March 27, 1886.—Ill.

CORPORATIONS—ACTION AGAINST AN AGENT FOR EMBEZZLEMENT—CIRCUMSTANTIAL EVIDENCE.—In an action for embezzlement against an agent, who was collector of tolls on a ferry, it was shown that at the time of entering service he was a poor man, that his salary was never more than $85 per month, and it was also shown that in the course of thirteen years he purchased real estate to the value of $45,000. *Held* that the evidence was sufficient to convict him for embezzelment although the company could not show the loss of any money—*N. Y. & B. Ferry Co.* v. *Moore.*—Filed April 13, 1886.—N.Y.

CORPORATION—EVIDENCE OF INCORPORATION—ACTION FOR RECOVERY OF SUBSCRIPTION TO STOCK—A certified copy of a charter, under a seal of the secretary of state, is competent evidence of the incorporation of the company. In an action against a subscriber for an installment on the stock, the defendant can not collaterally attack the existence of the corporation or the regularity of its organization.—*McCune Min, Co.* v. *Adams*—Filed April 9, 1886. Kans.

CORPORATION—POWER OF OFFICERS WITHIN THE REGULAR SCOPE OF BUSINESS.—Unless the power of corporate officers is limited by express provisions in the charter they will be presumed to have power to make contracts within the ordinary scope of business. The execution of a chattel mortgage, for a legitimate purpose, is within the scope of their power.—*Eureka Iron Works* v. *Bresnahan*—Filed April 8, 1886.—Mich.

COUNTY COMMISSIONERS—RESIDENCE—REMOVAL FROM VACATES THE OFFICE.—A county commissioner must reside in the district he represents and by which he was elected and a removal of his residence to any other part of the county will work a vacation of his office. Failure of the county clerk to post notices for an election for county commissioner as required by law, will not invalidate the election of a commissioner to be voted for. *State Ex. Rel. Malloy* v. *Kirving.*—Filed April, 21, 1886.—Neb.

CORPORATIONS—EXERCISE OF ITS CORPORATE POWERS IN ANOTHER STATE—LAW OF COMITY.—A corporation organized and chartered in one state, may by the law of comity exercise the powers within its charter in another state, provided the exercise of such powers be not in conflict with the public policy of such other state. A corporation organized for educational purposes may take and hold lands in another state. The rule as to perpetuities does not apply to legacies for educational purposes—*S, C. Female Academy* v. *Sullivan.*—Filed March 27, 1886.—Ill.

CONTRACT—WRITEN AGREEMENT—CAN NOT BE VARIED BY PAROL EVIDENCE—Where a written contract was entered into, where one party undertakes to pay all indebtness of another, "present and future," parol testimony cannot be introduced to show that a certain debt was not included. Such a question is one of law and must be determined by the court. *Swaine* v. *Granger's Union.*—Filed March 29, 1886.—Cal.

CREDITORS BILL—FAILURE TO DISCLOSE FINANCIAL STATUS.— There is no rule of law which requires one business man to disclose the state of his accounts to one having dealings with him, except he be interrogated specifically in regard to the same by one having an interest in knowing. The forbearance of a creditor is not a fraud upon other creditors. The county court, in a matter of insolvency, can pass upon matters equitable and legal, and a court of equity will not interfere except in exceptional cases to prevent failure of justice.—*Field et al* v. *Ridgeley.*—Filed March 27, 1886—Ill.

CREDITOR,S BILL—FRAUDULENT CONVEYANCE—JOINDER OF SEVERAL PARTIES.—In a bill to set aside fraudulent conveyances of property, the debtor and his several grantees, mortgagees, and judgment creditors, holding judgments alleged to be fraudulent, may be joined as parties defendant. A conveyance

or mortgage made for the purpose of obtaining money from time to time, may be in fraud of creditors, although the grantor or mortgagor had no fraudulent intent in the matter.—*Hurd* v. *Asherman.*—Filed March 27, 1886.—Ill.

CRIMINAL LAW— CONTINUANCE —WHAT FACTS MUST BE SET UP IN AN AFFIDAVIT.—The party applying for a continuance must show how he would suffer injury by a denial of his motion. When several affidavits are filed in support of the motion for a continuance, which are in conflict or inconsistent with each other, the court is not bound to treat both as true. An affidavit showing that by a continuance the defendant can show further testimony which is only cumulative is insufficient.—*Dacey* v. *People.*—Filed March 25, 1886.—Ill.

CRIMINAL LAW–INFORMATION INCORRECT–PLEA OF NOT GUILTY—AMENDED INFORMATION.—Where information was filed charging the crime as committed the day after the accusation, and the defendant entered a plea of not guilty, and after the jury was empaneled the court allowed an amendment of the information and proceeded to trial without requiring the defendant to plead to the amended information, *held* error. Defendant should have been required to plead to the amended information.—*People* v. *Moody.*—Filed March 29, 1886.—Cal.

CRIMMINAL LAW—DELAY IN BRINGING A PRISIONER TO TRIAL—HABEAS CORPUS.—Where a prisoner is held for a capital offense and the court for three successive terms, neglects or refuses to bring the prisoner to trial a motion for his discharge being denied, the order of the court cannot be reviewed by proceeding in *habeas corpus* before the supreme court.—*In Re Edwards.*—Filed April 9, 1886.—Kans.

CRIMINAL LAW—ARREST BY A CITIZEN WITHOUT A WARRANT—THE KILLNG OF A CITIZEN WHO ATTEMPS TO MAKE AN ARREST IS MURDER.—Where a citizen observes a pickpocket or a gang of pickpockets operating in a crowd, he is authorized to arrest them without warrant, and in making fresh pursuit for the purpose of making an arrest if the party pursued kills him, it is murder.—*Kennedy* v. *State*—Filed April 13, 1886.—Ind.

CRIMINAL LAW— WITNESSES—OWNERSHIP OF PREMISES WHERE BURGLARY HAS BEEN COMMITED.—In an indictment for burglary it is not neccessary to allege the ownership of the premises in the indictment. Burglary is an offense against the possession. Where ownership was alleged as in a firm and the evidence showed that the ownership was in one of the members of the firm, *held* immaterial.—*State* v. *Rivers.*—Filed April 21, 1886.—Iowa.

CRIMINAL LAW—ONE SENTENCE TO TAKE EFFECT UPON THE EXPIRATION OF THE TERM OF A PRIOR SENTENCE.—Where a prisoner was convicted of a crime and sentenced to penal servitude, for a period of twelve years, and being also convicted of another crime, was sentenced to the penitentiary for a period of three years to take effect, "from and after the expiration of the term of twelve years sentence this day imposed", *held* that the latter sentence is to uncertain as to the time of its commencement. —*Lamphere's case.*—Filed April 22, 1886.—Mich.

CRIMINAL LAW——MISCONDUCT OF JUROR AFTER SEALED VERDICT.—Defendant was indicted for an assault with a pistol, committed in a saloon. The case was given to the jury in the afternoon with instructions that, if they agreed, they might seal the verdict and separate. In the morning before the verdict was opened in court, one of the jurors visited the place of assault and conversed with persons concerning it. *Held* immaterial.—*Commonwealth* v. *Desmond.*—Filed Feb. 25, 1886.—Mass.

CRIMINAL LAW—INSTRUCTIONS—REASONABLE DOUBT.—It is error for the court to instruct the jury in a criminal case, that the doubt of the defendant's guilt must arise out of the evidence in the case in order to justify an acquittal. A reasonable doubt

may arise from want of evidence. Where the successful suitor of a young lady was murdered by one whom she rejected, her testimony that the accused had threatened to kill any one whom she preferred to him, is admissible.—*Brown* v. *State*.—Filed Mch 30, 1886.—Ind.

CROSSING RAILWAY TRACKS—CARE WHICH SHOULD BE EXERCISED.—A person in crossing a railway track, at a highway crossing, is bound to look for approaching trains, and if he fails to do so and is injured, he is guilty of such negligence as will bar recovery of damages. A common carrier, in crossing a railway track, is bound to use the highest possible care and prudence.—*Collington* v. *Brooklyn Cross-town Ry Co.*—Filed March 26, 1886.—N. Y.

DEBTOR AND CREDITOR—RIGHT OF DEBTOR TO PREFER ONE CREDITOR TO ANOTHER.—A debtor may lawfully prefer one or more of his creditors if he does it honestly, whether he does it by an actual sale of property or by pledge. Where it is provided in a contract that one of the contracting parties shall be bound to pay the debts of the other on certain conditions, and if he does so pay the debts of the other he shall have a right to withhold any moneys due the other party, this does not work an equitable assignment of the moneys. Such debtor may make a valid assignment of the moneys due him to a third party.—*Bd. of Freeholders* v. *Lindsley*.—Filed April 16, 1886.—N. J.

DEFAULT—MOTION TO SET ASIDE JUDGMENT—AFFIDAVIT OF DEFENDANT.—In a motion to open up a judgment and let in a defense, when the affidavit shows that the defendant has a good defense, and it appears that the failure to put in a defense was caused by a misunderstanding of the attorneys, the judgment should be set aside.—*Beatty* v. *O'Connor*.—Filed March 26, 1886.—Ind.

DEMURRAGE—DELAY IN DISCHARGING—QUESTION OF FACT FOR JURY.—The master of a vessel loaded with coal, reported at the point of destination and offered to discharge his load. The defendant insisted that he must take his turn at the dock in discharging. There was considerable delay, the docks being crowded. In an action for demurrage, it is *Held* that whether the delay was reasonable or not was a question for the jury.—*Scholl* v. *A. & R. Iron & Steel Co.*—Filed March 23, 1886.—N.Y.

DISCRETIONARY POWER OF SUPREME COURT—MAY REMAND OR MAY MODIFY AND ENTER FINAL DECREE.—When the supreme court reverses the judgment, with some modification, it is within the discretion of the court to remand, with an order to make certain modification, or to make the modification at once and enter a final decree. In either case the order of the supreme court must be first for the reversal of the decree of the court below. *W. & M. M'f'g Co.* v. *C. G. Wire Fence Co.*—Filed March 27, 1886.—Ill.

EQUITY—REFERENCE TO MASTER—RULINGS ON EXCEPTIONS TO REPORT IN CONFLICT WITH FINAL DECREE.—Where a case is referred to a master to take testimony and exceptions are taken to the finding of the master, the record subsequently shows that the rulings of the court on exceptions is in conflict with the final decree, the rulings will be upheld and the decree set aside.—*Hollingsworth* v. *Coon*.—Filed March 27, 1886.—Ill.

ESTOPPEL—SEPARATE CAUSES OF ACTION—PERJURY.—Where one employed at a salary of $9 per week agreed to leave $5 of each week's earnings in the hands of his employer as long as he was so employed, and aside from that made a deposit of $100 with his employer, in an action to recover the portion of his wages uncollected, *Held* that defendant was estopped from pleading the payment of the $100 deposited, as that was a separate cause of action. It is not necessarily perjury for one to swear to an affidavit of which the affiant does not know the contents.—*Byrnes* v. *Byrnes*.—Filed

March 23, 1886.—N.Y.

EQUITY—CANCELLATION OF RECORD OF INSTRUMENTS NOT ENTITLED TO RECORD—INSTRUMENT NOT ACKNOWLEDGED. The record of an instrument not acknowledged and not entitled to be recorded may be a cloud on a title, and the owner of such property may maintain an action to remove such cloud

The record of such instruments is not constructive notice but, if the purchaser has seen the record he will be deemed to have had actual notice.—*Walters* v. *Hartwig*.——Filed Apiil 2, 1886.—Ind.

EVIDENCE—PRIVILIGED COMMUNICATION—CONVERSATION IN PRESENCE OF ATTORNEY—Where two persons go to the office of an and attorney to have a paper prepared, converse upon the subject in his presence, the conversation is not privileged and may be admitted in evidence against one of the parties. —*House* v. *House*.—Filed April 22, 1886.—Mich.

EVIDENCE——OPINION OF WITNESSES—RES GESTAE.—In an action for damages for injury receive d while riding in a railway car, a witness testified that he was in the car and saw the position of plaintiff and that "he sat straight up in his seat, his elbow resting on the window sill, and *I should judge* that it could not project out of the window from the position he occupied in the car." He farther said "*My opinion was, from the position, that it was inside.* This testimony was admitted over objections made and exceptions taken *Held* that it was properly admitted. It is not properly the opinion of the witness. —*Hallahan* v. *N. Y. L. E. & W. Ry Co.*—Filed April 13, 1886.—N. Y.

EXPERT TESTIMONY—QUESTION FAMILIAR TO PERSONS GENERALLY—COMPETENCY OF.—Where a party left a horse unhitched and it ran away and was injured, in an action for damages, expert testimony was offered on the question of negligence, and the testimony was rejected on the ground that it was not a question of science, art or skill and therefore was not properly the subject of opinion by an expert. It was within the knowledge of men in the common walks of life.—*Stowe Admr.* v. *Bishop*.—Filed Feby, 1886.—Vt.

EXECUTION—HOUSEHOLDER—REBUTTING TESTIMONY OF DEFENDANT IN SUPPLEMENTARY PROCEEDINGS.—A man living in a house belonging to his married daughter, and after the death of his wife, continues to live in the same house, whilst his daughter, the owner of the house, with her husband comes and keeps house for her father, he is a householder within the meaning of the statute, and entitled to exemptions as such. In supplementary proceedings in aid of execntion, the testimony of plaintiff, that he has no property subject to execution, is not conclusive.—*Bipus* v. *Deer*.—Filed March 30, 1886.—Ind.

EXEMPTION—WAGES ATTACHED IN ANOTHER STATE—INJUNCTION.—Where execution is issued against a debtor, and the debtor's wages, which by law are exempt, are garnished and the attachment dissolved, the creditor cannot garnishee for the same debt in another state, where both the debtor and creditor live in this state, An injunction may be issued restraining the creditor from prosecuting the action in another state.—*Teager* v. *Landsley*,—Filed April 20, 1886.—Iowa.

EXECUTORS—ESTATE OF MARRIED WOMEN—EXPENSES OF LAST SICKNESS AND OF FUNERAL.—Where a married woman, owning a separate estate, dies, and a physician was called to attend her in her last illness, at her request, it is competent for her executor to pay the physician's bill out of her estate, and also reasonable funeral expenses incurred in her burial, although her husband has property in his own right.—*McClellan, Ex'rs* v. *Filson*.—Filed March 23, 1886.—O.

EXECUTORS AND ADMINISTRATORS—LOSS OF PROBATE RECORDS — PRESUMPTION—Where there has been a lapse of over 50 years, and during the period the records of the probate court have been lost, it will be

presumed that an administrator's deed executed before the loss of the record was in respects regular and valid. Where, in the deed, the lands were described by metes and bounds, as "being all the real estate in Fair Haven, whereof the said Joseph Brewer died seized, except the widow's dower," it is *held* the exception covered only the widow's life-interest of one third of the property and not a reversionary interest.—*Starr* v. *Brewer*—Filed January, 1889.—Vt.

FALSE PRETENSES—INDICTMENT FOR—PAYMENT BY WORTHLESS CHECK.—One cannot be convicted on an indictment for obtaining goods by false pretenses unless it be shown that defendant knew at the time of making the representations that they were false. Where one bought goods with the understanding that he was to pay cash for the property upon delivery, and upon delivery gave his check in payment of the same when he had no funds in bank against which to draw, *held* that he was guilty of false pretenses.—*Commonwealth* v. *Devlin.*—Filed April 1, 1886.—Mass.

FIXTURES—INTENT OF THE PARTIES—SURETIES TO A MORTGAGE NOTE.—The character of machinery placed in a building does not determine the question whether they are chattels or permanent fixtures so much as does the intent of the parties. The sureties to a mortgage note, by paying the note at maturity, do not lose the benefit of the mortgage security thereby.—*Manwaring* v. *Janison.*—Filed April 29, 1886.—Mich.

FORCE OF PRECEDENTS—POLICY OF FIRE INSURANCE—WAIVER OF FORFEITURE BY RECEIPT OF PREMIUM.—A point of law once adjudicated by the supreme court is final and becomes the law of the case in all future trials. A policy of insurance which contains a clause of forfeiture on condition that the property is encumbered, being assigned with the assent of the company, the condition adheres to the policy and the assignee is bound by it. Where a policy has become forfeited and the company subsequently receives the premium, such receipt of the premium is a waiver of the forfeiture.—*Ellis* v. *State Ins. Co.*— Filed April 21, 1886.—Iowa.

FORMER ADJUDICATION—SECOND ACTION FOR CLAIM WHICH MIGHT HAVE BEEN ADJUDICATED IN A FORMER ACTION.—A judgment in an action will bar a second action between the same parties for the same subject matter or any matter which should have been, but was not, adjudicated in the former action. Where a second action is brought, and it appears by the record that the declaration in the former, was sufficent to cover the cause of action alleged in the second, where judgment in the former was taken by agreement, the burden of proof is on the plaintiff to show that the settlement, by the former judgment, did not include the latter cause of action.—*Moser* v. *G. T. Safe Deposit Co.*—Filed April 5. 1886.—P.a

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FRAUDULENT CONVEYANCE—KNOWLEDGE OF GRANTEE—A BONA FIDE CONVEYANCE AS SECURITY.—A creditor may lawfully accept a transfer of property from his debtor, to secure his claim, although he knows the debtor is insolvent and cannot pay all his debts. In an action to set aside a conveyance on the ground that it was made in fraud of creditors and consummated by a conspiracy of of the parties to the conveyance, the plaintiff must show that the grantee had knowledge that the grantor was indebted to others. —*Citizens Bank.* v. *Rhutasel.*— Filed April 21, 1886. Iowa.

FRAUDULENT SETTLEMENT—REMEDY OF INJURED PARTY—ELECTION OF REMEDY.—Where a settlement has been made and one of the parties subsequently discovers that he has been defrauded, he can return what he has received and ask to be placed in the position he occupied before settlement, or keep what he has received and sue for damages sustained by the fraud. He must elect one or other remedy.—*Strong* v. *Strong.*—Filed March 26, 1886.—N.Y.

GUARDIAN AND WARD—BURDEN OF SHOW-

ING GOOD FAITH IN THE ADMINISTRATION OF THE TRUST.—Where a guardian deals directly with his ward he is bound to show fair dealings on his part. In a suit to set aside the final settlement of a guardian the approval of his report is not conclusive as against the averment that he has paid out moneys of his ward wrongfully, or on account of negligence, unless that point was specifically adjudicated in the settlement.—*Wainwright* v. *Smith.*—Filed April 17, 1886.—Ind.

HEALTH OFFICER—INSPECTION OF MILK—POWER OF INSPECTOR TO APPOINT A SUBSTITUTE.—An inspector of milk in the city of Boston cannot appoint an agent who shall have power to act in his absence, and to take samples of milk from a wagon against the will of the owner, for inspection.—*Commonwealth* v. *Smith.*—Filed Feb. 24, 1886.—Mass.

HOMESTEAD—AGREEMENT TO CONVEY—JOINT CONSENT OF HUSBAND AND WIFE—ACTION FOR SPECIFIC PERFORMANCE.—A husband and wife executed a bond to convey their homestead, but not simultaneously. The husband executed it first and subsequently the wife joined in the execution. The wife was illiterate and was not informed of the contents and nature of the bond except through the notary public who was the agent of the obligee. *Held* that there was no joint consent of the obligors and the specific enforcemant of the contract cannot be had in an action in equity.—*Bird* v. *Logan.*—Filed April 9, 1886.—Kans.

HOMICIDE—EVIDENCE—STATEMENT OF DECEASED IMMEDIATELY AFTER THE INJURY—In a trial for murder, the statements of deceased made immediately after receiving the fatal wound are competent evidence as part of the *res gestæ.* When a son testifies in behalf of his father who is the defendant, evidence of their. relationship may properly be admitted,and the jury may weigh the son's testimony in the light of their experience in life as to the inducements of the son to testify in favor of his father.—*People* v. *Wong Ah Foo.*—Filed March 26, 1886.—Cal.

HOMESTEAD—DEVISE TO A DAUGHTER—VESTED RIGHT OBTAINED IN FIVE YEARS.—A father, mother and daughter settles upon public land under the homestead laws. About five years after the settlement the father makes a will bequeathing one half the land to the daughter and the other half, together with all personal property, to his wife, and soon after dies. The wife causes the will to be probated and makes final proof of settlement and thereupon gives orally to the daughter her portion under the will and promises to make a deed for the same. The daughter marries and she and her husband enters upon her land and improves it,and after two years the husband dies. The daughter then lives elsewhere for 10 years, marries again and returns and occupies the land with her husband. *Held* that the mother cannot maintain an action in ejectment against her daughter for the land ,she having obtained a vested right at the end of five years.—*Newkirk* v. *Marshall.*—Filed April 9, 1886.—Kans.

HIGHWAYS—MATERIAL TAKEN FOR REPAIRS—COMPENSATION FOR.—There is no statutory provision whereby the owner of material taken for repairing a public highway can have his damages therefor assessed by a jury. The owner of such material who resists the supervisor in takiug such material is not guilty or resisting an officer under Sec. 6908 of thc statutes.—*Hendershot* v. *State.*—Filed April 13, 1886.—Ohio.

HIGHWAYS—ESTABLISHED BY USAGE—OBSTRUCTIONS.—In an action to prevent an obstruction in a highway, it is not absolutely necessary to show that the highway has been established by legal proceedings, and an entry of judgment in the matter. It may be shown to be established by long usage.—*People* v. *Lohfilem.*—Filed March 23, 1886.—N. Y.

HUSBAND AND WIFE——TRANSACTIONS WHICH TEND TO DEPRIVE THE HUSBAND'S CREDITORS OF THEIR RIGHTS.—Where the

effect of transactions between husband and wife is such as to deprive the husband's creditors of their rights, such transactions involve a badge of fraud and proof of the good faith of such transactions may be required. A witness may refresh his memory with memoranda made at or about the time of the occurrence.—*Lipscomb* v. *Lyon.*—Filed April 21, 1886.—Neb.

HUSBAND AND WIFE—ACTION BY WIFE FOR SEPARATE MAINTAINANCE—SERVICE ON HUSBAND IN ANOTHER STATE.—In an action by a wife against her husband for separate maintainance, where the husband resided in another state and personal service of the petition was had on him at his home, it is *held* that such service was sufficient to give the probate court jurisdiction in the case.—*Blackington* v. *Blackington.*—Filed April 1, 1886.—Mass.

HUSBAND AND WIFE—DESERTION BY HUSBAND A CRIME—LEAVING WIFE WITHOUT SUPPORT.—The statute makes it a crime for a husband to desert his wife and leave her without support, but where she has a separate estate or means of support aside from the husband this statute does not apply. Where a husband is thus indicted and it appears that she has means for her comfortable support, the indictment should be quashed. —*State* v. *Rice.*—Filed April 1, 1886.—Ind.

HUSBAND AND WIFE—DIVORCE—ADULTERY COMMITTED PENDING THE ACTION—AMENDING ANSWER.—In an action for divorce the defendant cannot set up any facts not embraced in the answer, but if the plaintiff has been guilty of adultery or any act which is a bar to the action, pending the suit and after answer was filed, the defendant may file a supplemental answer setting up the fact. Adultery committed by the plaintiff, any time before the final decree, is an absolute bar to the action.—*Fuller* v. *Fuller.* —Filed April 23, 1886.—N. J.

INJUNCTION —DISMISSAL— LIABILITY OF SURETIES ON BOND.—Where an injunction issued and on motion of part of the defendants was dismissed, on the ground of the non joinder of other defendants, without prejudice. *Held* that the sureties are not liable for damages on the bond.—*King* v. *Bishop.*—Filed April 21, 1886.—Ohio.

INJUNCTION—ISSUED WITHOUT BOND—SUBSCRIPTION IN AID OF RAILWAY COMPANY. —Where an injunction is granted, upon application of plaintiff, restraining defendent from doing certain things, and the plaintiff gives no bond, and the defendants have had no notice of the application, the injunction is wholly void and may be disregarded. Where a petition signed by the requisite number of voters is presented to the county commissioners asking that the question of voting a tax in aid of a railroad be submitted to the voters, it is the duty of the commissioners to submit the question.—*State* v. *Lippert et, al.* —Filed April 9, 1886.—Kans.

INTOXICATING LIQUOR—SOLD IN VIOLATION OF TERMS OF LICENSE—LIQUOR NUISANCE.—The statute requires that liquor saloons shall have no back entrances thereto. Where by the terms of a license it is required to close all entrances to the saloon except the front, and he keeps open a door in the rear, he may be indicted for keeping a liquor nuisance.—*Commonwealth* v. *Ferden.*—Filed Jan. 11. 1886.—Mass.

INTOXICATING LIQUORS—SELLING ON SUNDAY—EVIDENCE.—In support of an indictment for selling liquor on sunday, it is sufficient to convict if a witness testifies that he found the barkeeper standing behind the bar and asked him for some beer, obtained it and drank it on sunday.—*Dante* v. *State.* —Filed March 26, 1886.—Ind.

INTOXICATING LIQUORS—SUFFICIENCY OF COMPLAINT—THE PLACE SEARCHED DIFFERENT FROM THE ONE DESCRIBED IN WARRANT. —Upon a complaint charging the defendant with exposing intoxicating liquor for sale, the place was described in the warrant as "G. Place" and the premises searched were

G. Street Place." The officer found liquor in a chest on the premises and saw evidence of it being offered for sale. *Held* that the variance between the warrant and the place searched was immaterial.—*Commonwealth* v. *Henderson.*—Filed Nov. 28, 1885.—Mass.

INTOXICATING LIQUORS—SALE OF—SOLD IN ONE STATE AND DEVILERED IN ANOTHER.—A resident of Pennsylvania sold intoxicating liquor in Rhode Island and agreed to deliver the property there. He did deliver and took a note in payment. *Held* that the sale was completed in Rhode Island and being in violation of the law of that state payment of the note could not be enforced by law.—*Weil* v. *Golden.*—Filed March 31, 1886.—Mass.

INTOXICATING LIQUOR—SALE OF ON SUNDAY—EVIDENCE.—In an action for the illegal sale of liquor on sunday it was shown that the bar was closed in front but open at the side entrance, that persons had been seen going in and coming out in a state of intoxication, and that liquor had been served with meals. *Held* that this evidence was properly submitted to the jury.—*Commonwealth* v. *Leighton.*—Filed Nov. 28, 1886.—Mass.

JUDGMENT BY CONFESSION—ENTRY BY CLERK OF COURT IN VACATION—VALIDITY OF JRDGMENT IN ANOTHER STATE.—Where the prothonotary or the clerk of the court in Pennsylvania enters up a judgment on a penal bond, on a written authority to do so by the obligor, it is valid although the defendant be absentf rom the state at the time, and such judgment may be enforced in this state to the extent of the actual damages suffered hy the obligee. A judgment valid in another state may be enforced here although a like judgment obtained here would be void.—*Ritter* v. *Hoffman.*—Filed April 9, 1886.—Kans.

JUROR—DISQUALIFIED BY HAVING FORMED AN OPINION—DISCRETION OF COURT IN SELECTING JURORS.—Where a juror has formed an opinion which repels the presumption of innocence in a criminal case, he is disqualified to sit in the case. The court has some degree of discretion in the selection of proper jurors and if in the exercise of such discretion he does not prejudice the defendant's case no exception can be taken thereto.—*People* v. *Barker.*—Filed April 8, 1886.—Mich.

JURY TRIAL—ACTION ON NOTE AND MORTGAGE—PLEADINGS.—In an action on a promissory note secured by a mortgage, where the pleadings admit the right of recovery and there is no issue except the question of a right to foreclose the mortgage, a trial by jury cannot be demanded as a matter of right.—*Morgan* v. *Field.*—Filed April 9, 1886.—Kans.

JURY—QUALIFICATIONS—HAVING FORMED AN OPINION—CHALLENGE FOR CAUSE.—In a criminal action, where a juror declares that he has read newspaper comments relating to the crime and has in some measure formed an opinion of the guilt or innocence of the defendant, but not in that degree which would prevent him from rendering a verdict according to the evidence, and he is challenged for cause, it is for the court to determine whether he is competent to sit on the jury in the case or not.—*People* v. *Otto.*—Filed March 23, 1886.—N. Y.

JUSTICE OF THE PEACE—ATTACHMENT—ORDER OF JUSTICE DISMISSING THE ATTACHMENT.—In a justice's court an attachment was discharged and judgment rendered on the merits of the case. The plaintiff took an appeal from both the order discharging the attachment and the judgment. *Held* that the order of the justice discharging the attachment was not appealable and that part of the appeal was dismissed.—*Roll et al* v. *Murray.*—Filed April 9, 1886.—Kans.

LARCENY—EMBEZZLEMENT BY AN EMPLOYE—EMPLOYE OF A CORPORATION.—One who being an employe, appropriates his employer's money which has come into his hand by reason of his employment, to his own use, is guilty of larceny. This offense may be committed by the employe of

an individual or firm or corporation. To constitute the crime of larceny the money must have been received by reason of his employment.—*State* v. *Goode*.—Filed April 21, 1886.—Iowa.

LANDLORD AND TENANT—ACTION FOR USE AND OCCUPATION—RELATION MUST BE SHOWN—A party having sold premises to another and left some stock on the premises for the period of two months, the grantee brought an action to recover for the storage of the stock. *Held* that as he failed to show that the relation of landlord and tenant existed he could not recover for use and occupation.—*Preston* v. *Hawley*.—Filed March 23, 1886.—N. Y.

MALICIOUS PROSECUTION — PROBABLE CAUSE—ONE LIABLE FOR DEBTS OF AN INSOLVENT.—A party made his note to the creditor of an insolvent debtor and delivered it to him to be used in case a compromise was effected with the insolvent. The compromise failed and yet the note was used and had to be paid by the maker. The maker of the note then brought an action for recovery of the money. The holder of the note brought an action against the maker for the debt of the insolvent, and recovered, and then brings an action for malliclous prosecution. *Held* that there was probable cause.—*Sartwell* v. *Parker*.—Filed March 31, 1886.—Mass.

MANDAMUS—AN ACT PROHIBITED—SPECIAL ASSESSEENT.—A second special assessment cannot be compelled within five years after the dismissal of an assessment for the same purpose. *Mandamus* will not issue to compel an act which has become unlawful. *Mandamus* will not issue to compel municipal authorities to levy an assessment for the payment of judgments obtained until demand has been made by the proper party for payment.—*People* v. *Hyde Park*.—Filed Jan. 25, 1886.—Ill.

MARRIAGE—COHABITATION AS EVIDENCE OF—MARRIAGE OF A SECOND, WHILE FIRST WIFE IS LIVING.—A man marries a wife and subsequently deserts her and marries another. The second wife dies and he marries a third whom he also deserts. In 1867 he marries a fourth wife. It is subsequently found that his first wife died in 1866. *Held* that his last marriage was valid.—*Rice* v. *Randlett*.—Filed March 31, 1886.—Mass.

MASTER AND SERVANT—CONTRACT FOR A GIVEN TERM—DISCHARGE DURING THE TERM—One engaged for service for a certain term at a fixed compensation which is payable in installments, and being wrongfully discharged during the term by the employer, and paid up in full to the date of his discharge, cannot enforce payment for balance of the term. His remedy is for damages for a breach of the contract. *James* v. *Commissioners of Allen Co.*—Filed April, 20, 1886.—Ohio.

MISTAKE IN MORTGAGOR'S NAME DOES NOT INVALIDATE THE MORTGAGE WHEN MISTAKE IS APPARENT—Where mortagors were described in the granting, defeasance and *testatum* clause as Charles B. Clark and Mary Clark, his wife, and executed and delivered by Charles A. Clark and Sarah Clark, his wife, it is *held* that the mistake is apparent on the face of the mortgage and does not invalidate the mortgage.—*Dodd* v. *Bartholomew*.—Filed March 23, 1886.—Ohio.

MORTGAGE—FORECLOSURE—RIGHTS OF PARTIES TO GROWING CROPS ON THE LAND.—The mortagor, after the foreclosure of the mortgage but before the sale, planted a crop of corn on the land. One day before the sale of the land the mortgagor sold the corn which was growing and not matured. *Held* that the sale by the mortagor of the growing crop was invalid; that the growing crop belonged to the purchaser under the mortgage.—*Beckman* v. *Dikes*.—Filed April 9, 1886.—Kans.

MORTGAGE—AGREEMENT TO EXTEND—FAILURE OF MORTGAGOR TO PERFORM AGREEMENT.—A mortgagor agreed to erect certain buildings and to make certain improvements in consideration of which the mortgagee agreed not to foreclose, but to extend the payment 90 days. Upon the failure of

the mortgagor to perform his part of the agreement it is *held* that the mortgagee might proceed to foreclose. —*Ferris* v. *Spooner*. —Filed March 23, 1886.—N. Y.

MORTGAGE—RECOVERY OF VOID TAXES PAID BY MORTGAGEE—STATUTE RETROACTIVE —The statute which provides that taxes which may have been paid by a mortgagee of lands, and which are subsequently declared void, shall be refunded to him, is retroactive and applies to cases arising before the passage of the act and is constitutional.—*Coles* v. *Washington Co.*—Filed April 5, 1886. —Minn.

MORTGAGE—MORTGAGED PROPERTY DAMAGED—ACTION FOR DAMAGES BY MORTGAGEE. —Where property subject to a mortgage was damaged by the overflow of water, and the mortgagor makes good all damage to the mortgagee, and the mortgagee subseqnently brings an action for damages against the party causing the overflow and damage, such action will not lie.—*James* v. *City of Worcester*.—Filed March 21, 1886—Mass.

MORTGAGE—QUIT CLAIM DEED BY MORTGAGEE—WORKS AN ASSIGNMENT AND NOT A DISCHARGE OF MORTGAGE.—Where land is subject to a mortgage and the mortgagee is in possession for the purpose of foreclosure, a quit claim deed to the land, executed by him works an assignment of the mortgage and not a discharge of the same.—*Green* v. *Currie*.—Filed March 12, 1886.—N. H.

MUNICIPAL CORPORATIONS—SPECIAL ASSESSMENTS FOR STREET IMPROVEMENTS—RIGHTS OF LOT OWNERS.—Where special assessments are made for street improvements the owners of lots assessed are entitled to notice as provided by statute. Such tax is not against the person but against the property, and the proceedure must be strictly according to statute or the assessment will not be valid.—*Hawthorne* v. *East Portland*.—Filed March 17, 1886.—Oregon.

MUNICIPAL CORPORATIONS.—ACCUMULATION OF SNOW AND ICE ON THE SIDEWALK—NOTICE.—Where snow and ice had accumulated on the sidewalk and the patrolman had for eight consecutive days made a memoranda of it and left notice of the same at the station, in an action for injury caused by the ice it is *held* that the notice left at the station by the patrolman was not sufficient to charge the city with notice.—*Twogood* v. *City of New York*.—Filed April 13, 1886.—N. Y.

MUNICIPAL CORPORATIONS—PAROL CONTRACT—STATUTE OF FRAUDS—RESOLUTION OF COUNCIL.—A municipal corporation may be bound by a parol contract made by the proper city officers. Such contract for the purchase of a fire-engine of a value greater than $50. is void under the statute of frauds unless part payment has been made. A resolution of council authorising a contract and reduced to writing cannot be construed as a written contract.—*Over* v, *City of Greenfield*.—Filed March 30, 1886.—Ind.

MUNICIPAL CORPORATIONS—ALLOWING A STEPPING STONE TO BE PLACED WHERE IT IS AN OBSTRUCTION.—Where city authorities assent to the placing of a stepping stone in such a position that it is in a measure an obstruction on the sidewalk, and if a person fall upon or over it and is injured the city is not liable for damages. The fact that others had stumbled and fallen upon it besides the person injured does not make it a nuisance.—*Dubois* v. *City of Kingston*.—Filed April 13, 1886.—N. Y.

MUNICIPAL CORPORATIONS—EXTENDING STREETS ACROSS RAILWAY TRACKS—ASESSMENT OF DAMAGES.—The power of a municipal corporation to extend a street across a railway track is implied. The taking of the land for right of way, by a railway company, is subject to public use not inconsistent with the railroad company's use of the same. The action of a city council in extending streets is not subject to review.—*St. P. M. & M. Ry. Co.* v. *Minneapolis*.—Filed April 7, 1886. —Minn.

MUNICIPAL CORPORATION—ELECTION OF CITY SOLICITOR—CONCURRENCE OF COMMON

COUNCIL AND BOARD OF ALDERMEN.—The city ordinance of Lawrence provided for the election of a city solicitor by concurrent action of the common council and board of aldermen. Where the election of a city solicitor, elected by the common council but is not concurred in by the aldermen it is *held* to be no election and a solicitor so elected cannot recover salary for the office.—*Saunders* v. *City of Lawrence.*—Filed March 31, 1886.—Mass.

MUNICIPAL CORPORATIONS — POWER TO PURCHASE FIRE-ENGINES IMPLIED—INHERENT POWER.—The power of a municipal corporation to purchase fire-engines is inherent in the corporation, although not expressly given in the charter, Where the power was expressly given in the original charter, which has been amended, and the amended charter does not contain the express power, this does not deny the corporation the power to purchase.—*Bluffton* v. *Studebaker.*—Filed April 1, 1886.—Ind.

MUNICIPAL CORPORATION —OFFICER AGREEING TO TAKE LESS THAN THE FIXED SALARY IS BOUND BY HIS AGREEMENT.—Plaintiff proposed to the common council that if he were elected city treasurer he would serve for the sum of $2,000 per annum whilst the compensation at the time, fixed by the law, was 1 per cent on the funds handled by him. The council appointed him treasurer and allowed him to serve for three years. This action is brought to recover the compensation allowed by law without regard to his agreement. *Held* that he could not recover more than $2,000 per annum.—*Hobbs* v. *City of Yonkers.*—Filed March 23, 1886.—N. Y.

MUNICIPAL CORPORATIONS—GRADING OF STREETS.—RAILWAY TRACK ON STREET.—Abutting lot owners can compel the city to follow the established grade of streets when the streets are graded, but where the natural surface of the street is above or below the the established grade they cannot compel the city to grade the street until the authorities determine to do so. Likewise where a railroad track is laid upon the natural land surface the company cannot be compelled to change the grade by individual lot owners. —*Given* v. *City of Des Moines.*—Filed April 22, 1886.—Iowa.

NEGLIGENCE — BUILDING OVERHANGING ADJOINING LOT—DUTY OF OWNER OF BUILDING. Where two buildings stand near each other on adjoining lots and the eaves of one project so as to throw the water on the adjoining lot, to the injury of the owner thereof, an action will lie against the owner of the projecting building for damages. It is his duty to but up an eaves trough to carry the accumulation of water off on the roof.—*Hazeltine* v. *Edgmand.*—Filed April 9, 1886.—Kans.

NOTICE OF TAX SALE—NOTICE SUBSEQUENTLY LOST FROM THE RECORD—VALIDITY OF TAX DEED.—Where notice of a tax sale was properly given and proof made of the same, but the notice subsequently lost from the record, such loss will not render the tax sale void. Bidders at a tax sale who do not bid against each other, but who have not had any common understanding or combination not to bid against each other, do not thereby render the sale invalid. A tax deed in proper form, but recites that the land was publicly sold instead of sold at public auction, is not invalid for that reason.—*Davis* v. *Harrington.*—Filed April 9, 1886.—Kans.

NEW TRIAL—TAMPERING WITH THE JURY —FINDING OF QUESTION OF FACT.—In support of a motion for a new trial defendant introduced evidence to show that the jury had been tampered with by the deputy sheriff. Upon examination the deputy denied the charge and the court denied the motion. *Held* that the finding of the court on the hearing of the evidence was final.—*Watson* v. *Stats.*—Filed April 23, 1886.—Iowa.

PARTITION—DIVISION OF COSTS AND EXPENSES BETWEEN THE DISTRIBUTEES.—In an action for partition, where one party owned two-elevenths and another owned nine-eleventhes interest, it is *held*, that the costs, attorney's fees and expenses, should

be paid by the parties in the proportion of their interest in the property. Where property cannot be divided without manifest injury it shall be sold and the proceeds divided in the proportion of their respective interests.—*Sarbach* v. *Newall.*—Filed April 9, 1886.—Kans.

PARTITION—IMPROVEMENTS—TENANTS IN COMMON—EQUITY.—A party bought one half of a flouring mill, which was out of repair at the time, and soon afterward the other half was sold on execution and the party who had already purchased one-half bought the other half at the execution sale. He soon after made some repairs and afterward judgment creditors came in and redeemed the property from execution sale. *Held* that the party who purchased and made improvements was entitled to remuneration for the improvements made.—*Ford et al* v. *Knapp et al.*—Filed April 13, 1886.—N. Y.

PARTITION OF AN ESTATE—DISTRIBUTION—REVIEW OF PARTITION PROCEEDINGS.—Where proceedings in partition have been had and distribution made a petition for review of the proceedings cannot be entertained on the ground that one of the distributees was not an heir at law of the decedent.—*Wilsons's Appeal*—Filed Nov. 2, 1885.—Pa.

PATENTED INVENTION—TITLE TO PATENT IN ISSUE.—INJUNCTION ISSUED BY STATE COURT..—Where a patent was issued and the patentee contracted with a manufacturer to manufacture the patented article and pay a royalty on the same, and the manufacturer refusing to pay the royalty, an injunction is issued from a state court restraining the further use of the patent by him, to which he replies denying that the patentee has a right to the invention, it is *held* that where the validity of the patent is put in issue the state court has no jurisdiction and the injunction is dismissed.—*Hat Sweat Mfg. Co.* v. *Reinsehl.*—Filed April 13, 1886.—N. Y.

PARTNERSHIP—CHATTEL MORTGAGE—PARTNERSHIP AND INDIVIDUAL—CLAIMS BOTH INCLUDED IN SAME MORTGAGE.—Two parties formed a partnership each putting in $1,000. One of the partners borrowed the funds he put in and gave his note for the same, the other partner signing the note as surety. The firm subsequently becoming insolvent one of the partners executes a chattel mortgage on firm property securing certain creditors amongst whom he included the creditor who loaned the $1,000 original capital. *Held* that this was not a firm debt and the mortgage was invalid as to that particular creditor or item,—*Walker & White.*—Filed April 8, 1886.—Mich.

PLEADINGS.—MOTION IN ARREST OF JUDGMENT—NEGLIGENCE.—In an action for damages for negligence, in allowing a horse to run away, it was alleged in the declaration that defendant left the horse so negligently, carelessly and insecurely tied that he broke away and violently ran into the plaintiff so as to injure him. The defendant moved in arrest of judgment for want of a sufficient cause of action stated in the declaration which motion was overruled. *Held* no error. The declaration was sufficient.—*Rumsey* v, *Nelson.*—Filed January, 1886.—Vt.

PRINCIPAL AND AGENT.—AGENT ACCEPTING A NOTE PAYABLE TO HIMSELF IN PAYMENT OF DEBT DUE PRINCIPAL.—An agent authorized to collect a debt for his principal is not presumed to have the right to accept the debtor's note, made payable to himself, in payment of the debt. The principal in such case may repudiate the settlement and sue on the original debt.—*Robinson et. al.* v. *Anderson et. al.*—Filed April 3, 1887.—Ind.

PLEADING.—SUFFICIENCY OF COMPLAINT.—INSTRUCTIONS.—A complaint which avers that the plaintiff has performed work and labor for defendant and that defendant is indebted to plaintiff therefor, is sufficient although there be no averment that the debt is due and unpaid. Where the court gives oral

instructions, although requested by the plaintiff to give them in writing, and the defendant makes no request for the instructions to be given in writing, the defendant cannot complain of the action of the court in giving oral instructions.—*Jaqua* v. *Cordesman & Egan Co.*—Filed April 1, 1886.—Ind.

PLEADING.—DEFECTIVE COMPLAINT, CURED BY VERDICT.—Where an injunction issued and a bond given, conditioned upon the injunction being wrongful or without sufficient cause, in an action on the bond, after dismissal of the injnnction the complaint alleged simply that the injunction had been issued and had been dissolved, but did not allege that it had been wrongful or without good cause. *Held* that a demurrer might have been successfully interposed but that after judgment the defect in the complaint was cured.—*Olds* v. *Carey.*—Filed April 21, 1886.—Ore.

PRINCIPAL AND AGENT.—PROOF OF AGENCY—SCOPE OF AUTHORITY OF SUPERINTENDENT OF A CORPORATION.—The scope of an agent's authority cannot be determined by his occupying the position of superintendent of a corporation, nor can the object and scope of business of a corporation be determined by its title. A telephone company having received poles from a sub-contractor, and issued vouchers for the same to the original contractor, no action can be maintained against the company for the contract price until the vouchers are accepted. —*Telephone Supply Co.* v. *Thompson.*—Filed March 1, 1886.—Pa.

PRINCIPAL AND AGENT.—EMPLOYMENT OF SUB-AGENT BY AN AGENT.—Where an agent is appointed to transact certain business in which a sub-agent is not necessary, and not usually employed, if he appoints a sub-agent his principal is not liable for his acts. If the agent is authorized to appoint a sub-agent then the sub-agent becomes the agent of the principal.—*Barnard* v. *Coffin.*—Filed Jan. 11, 1886.—Mass.

PROMMISSORY NOTE.—CONSIDERATION A GAMBLING TRANSACTION.—VOID IN THE HANDS OF AN INNOCENT PARTY.—Where the consideration of a promissory note is based upon a gambling transaction, the note is void in the hands of an innocent purchaser for value.—*Harper* v. *Young.*—Filed April 5, 1886.—Pa.

PROMISSORY NOTE.—PARTIAL PAYMENTS ENDORSED THEREON.—EVIDENCE OF PAYMENT.—Where promissory note is sued on and comes from the hands of the party seeking payment, the endorsements of partial payments are *prima facie* evidence of the payment, but if it comes from the possession of the party resisting payment, he must show that the endorsements were made while in the hands of payee.—*Chamberlain* v. *Chamberlain.*—Filed March 27, 1886.—Ill.

PROMISSORY NOTE.—TRANSFERRED AFTER MATURITY—WHO MAY MAINTAIN AN ACTION ON A NOTE.—The endorsee of a note, transferred to him after maturity takes it, subject to any defense which might have been made to it in the hands of the payee. Actions must be prosecuted in the name of the real party in interest. In an action on a promissory note the action may be defeated by showing that the plaintiff is not the real owner of the note.—*Woodsum* v. *Cole.*—Filed March 24, 1886.—Cal.

PUBLIC LANDS.—LANDS BORDERING ON TIDE-WATER.—LIMITATIONS OF THE GRANT. —Under a patent of the United States to lands bordering on tide-water, the grantee only acquires title to the point of high-water mark, in the absence of an express grant in the patent extending further. The patent, itself, is the only evidence of the extent of the grant.—*Wright* v. *Seymour.*—Filed March 23, 1886.—Cal.

PUBLIC LANDS—WHO IS AN ACTUAL SETTLER — HOW EARNED BY SETTLER. — An actual settler upon land is one who establishes himself upon the land, and takes possession for his exclusive occupancy with a view

af acquiring title and purchasing it from the state. A settler who enters upon public lands, and makes improvements thereon and occupies the land while making such improvements, acquires thereby an incohate right to purchase the land and his occupancy and improvements are notice to all the world of his right.—*Gavitt* v. *Mohr.*—Filed Jan. 30, 1886.——Cal.

PUBLIC HIGHWAYS—PPOCEEDINGS TO ESTABLISH.—REMONSTRANCE BY LAND OWNER.—Where the owner of land remonstrates against the establishing of a public highway, both as against its public utility and on account of damages, he raises two separate issues which must be tried *de novo* in the circuit court.—*Reynolds* v. *Shults.*—Filed April 22, 1886.—Ind.

PURCHASER OF SHERIFF'S CERTIFICATE OF SALE.—CERTIFICATE CANNOT BE ATTACKED IN THE HANDS OF AN ASSIGNEE ON THE GROUNDS OF CONSIDERATION.—The holder of a sheriff's certificate of sale, who has taken it by assignment, cannot be compelled to show that he paid value for it. The holder had a right to assign it and he might assign it as a gift.—*Shelton* v. *Blake.*—Filed Nov. 14, 1886.—Ill.

QUO WARRANTO.—PROCEEDINGS TO OUST A PROBATE JUDGE FOR FAILURE IN DUTY.—It is made the duty of a probate judge to count the funds in the hands the county treasurer at stated intervals. Where a probate judge neglected or refused to perform this act as required, an action is brought to deprive him of his office for this refusal. *Held* that the duty to count the funds in the treasury was an incidental duty and not a judicial obligation and that he could not be ousted of his judgeship for his neglect in this.—*State* v. *Brown.*—Filed April 9. 1886.—Kan.

PATENTED INVENTIONS.—SALE OF LETTERS PATENT WITHOUT WARRANT OF UTILITY OF THE INVENTION.—One party owning letters patent for an invention which was supposed to be valuable if used jointly with another invention held by another party, entered into a contract with the latter whereby the inventions were merged and they were each to share in the proceeds of the combination. One of the inventions was found to be practically valueless, and the other party sold his invention alone. The owner of the worthless patent sues for his portion of the proceeds of the sale. *Held* that he was entitled to it under their their agreement.—*Fowler* v. *Mallory.*—Filed March, 1886.—Conn.

RAILWAY COMPANY.——CROSSING OF STREETS IN THE CITY OF MINNEAPOLIS.—A railway company has the right to cross public streets or highways, subject to the obligation, not to impair or impede the right of the public to the thoroughfare. It must put the street in good condition after crossing and must maintain the same in good condition for the use of the public.—*City of Minneapolis* v. *St. P. M. & M. Ry. Co.*—Filed April 6, 1886—Minn.

RAILWAY COMPANIES.—DEGREE OF LIABIILTY.—INJURY CAUSED BY OBSTRUCTIONS ON STATION GROUND.—Where a personal injury was caused by an obstruction on the station grounds, it is held that the company is not required to exercise the same degree of care in regard to such obstruction as if it related to the running of trains on the road. In an action for damages the court charged that the passenger on the station ground "was entitled to all the care which human foresight could furnish." *Held* that this charge was error.—*Moreland* v. *Boston & P. Ry. Co.*—Filed Jan. 12, 1886.—Mass.

RAILWAY COMPANIES.——NEGLIGENCE.—STEPPING OFF A CAR AFTER THE TRAIN IS IN MOTION.—A passenger in stepping off a car after the train was in motion slowly, is not guilty of negligence in so doing. The fact that platforms at the several stations are not the same height is immaterial in an action

for injuries. In an action for personal injury to a wife, the husband must join.—*Nichols* v. *Dubuque & D. R. Co.*—Filed April 23, 1886.—Iowa.

RAPE.—A QUESTION FOR THE JURY TO DETERMINE WHETHER THE CRIME WAS PERFECTED OR NOT.—On appeal, in an action for rape, the extent of penetration cannot be discussed as that is a question for the jury. A person having read newspaper comments on a crime is not thereby disqualified to sit on the jury.—*People* v. *Crowley.*—Filed Aprii 13, 1886.—N. Y.

RATIFICATION OF AGENTS ACTS..—STATEMENTS OF AGENT.—ATTACKING COMPLAINT ON APPEAL.—The ratification of an agents acts bind the principal the same as though the authority had originally been given. The agent's statements in regard to past transactions, will bind his principal if they are a part of the *res gestæ.* A complaint, attacked on appeal as insufficient, will be held good if any one paragraph is good.—*U. S. Evpscss Co.* v. *Rawson.*—Filed April 13, 1886.—Ind.

RATIFICATION OF CONTRACT.—CONTRACT ILLEGALLY MADE BETWEEN A TEACHER AND SCHOOL-BOARD.—A school board must meet in order to transact business legally. Where a contract was made between a board and a a teacher, without a meeting, and a majority signed the contract and the teacher enters upon the work of teaching and continues for six weeks and receives pay for the same, which is granted by the concurrence of all the board, the board will be held to have ratified the contract illegally made.—*Crane* v. *Bennington School-Dist.*—Filed May 6, 1889.—Mich.

RECEIVER—APPOINTMENT OF—EQUITY.—A court of equity will not exercise its power to appoint a receiver of an unincorporated company and order its business wound up and property sold unless equity clearly requires it.

RECEIVING PAYMENT IN PROPERTY.—ATTORNEY COLLECTING A CLAIM.—SPECIAL AUTHORITY.—An attorney at law, employed to collect a claim, has no right to accept anything but money unless specially authorized to do so. One claiming to have such special authority may be called upon to prove the same.—*Bigler* v. *Toy.*—Filed April 23, 1886.—Iowa.

REFERENCE.—FEES OF REFEREE APPOINTED TO SELL REAL ESTATE.—ADDITIONAL FEE FOR DISTRIBUTION.—Where a referee is appointed to sell real estate and the additional duty of making distribution of the proceeds is imposed on him, he is entitled to an additional commission for making distribution.—*Race* v. *Dada.*—Filed April 27, 1886.—N. Y.

REFEEENCE.—FINDINGS BY REFEREE—SHOULD NOT SUPPLEMENTED BY THE COURT.—Where parties to an action choose to refer their issues to a referee, they are entitled the findings of the referee on questions of fact, as a final matter, and the court should not supplement such findings by reviewing an abstract of the evidence and modifying the findings of the referee.—*Bank* v. *Strait,* —Filed April 27, 1886.—Vt.

REPORTS.—SUPREME COURT OPINIONS NOT A SUBJECT OF COPYRIGHT.—A state has no right to grant to any individual the exclusive right to publish the opinions of the supreme court of the state. Such opinions declare the law, and every citizen is presumed to know the law. Such opinions stand substantially on the same footing as the stautes, and justice requires that all should have free access to them. To deny this would be against sound public policy.—*Nash* v. *Lathrop.*—Filed May 11, 1886.—Mass.

RIPARIAN RIGHTS.—OWNER OF LAND BOUNDING A LARGE NATURAL POND.—The owner of land bounding on a lake or large pond of water may have an injunction restraining any one from drawing off water or maintaining a dam so as to raise or lower the water of the pond below or above its

natural level, if by the raising or lowering of the water he would suffer damage.—*Potter* v. *Howe.*—Filed March 31, 1886.—Mass.

SALARY OF PUBLIC OFFICER.—HOLDING OFFICE UNDER A DECREE OF COURT SUBSEQUENTLY DECLARED VOID.—An officer receiving a certificate of election and, being subsequently ousted of his office by a decree of court awarding the same to another, and the latter entering upon the duties and holding the office for a time when the decree of the court is reversed, and he reinstated, he is entitled to recover his salary for the whole time.—*Kessel* v. *Yeiser.*—Filed April 13, 1886—N. Y.

SALE OF CORPORATE STOCK.—RECOVERY WHERE THE STOCK IS WORTHLESS.—TESTIMONY OF THE PARTIES.—Where one sold corporate stock, which proved worthless, and the vendee brought an action to recover the money paid, he testified that the stock was not of the value it was represented, it is held that the vendor ought to have been permitted to testify as to the value of the stock.—*Reeve* v. *Dennett.*—Filed Feb. 26, 1886.—Mass.

SALE OF PERISHABLE FREIGHT.—NOTICE —TRIAL.—MOTION TO STRIKE OUT ANSWER. —A common carrier may not sell perishable freight untill he gives the owner, agent or consignee 24 hours notice. A motion to strike out defendant's answer after the case has gone to trial comes too late.—*Martin* v. *McLanghlin.*—Filed April 17, 1886.—Colo.

SATISFACTION OF JUDGMENT BY AN ATTORNEY.—CONDITIONAL.—CANNOT BE RECALLED.—Where an attorney voluntarily paid a judgment against his client without the knowledge of the latter, and with an agreement with the opposing attorney, that if the client refused to reimburse him, the satisfaction of the judgment should be cancelled it is *held* that the satisfaction of the judgment could not be recalled.—*Rogers* v. *Welte.*—Filed April 29, 1886.—Mich.

SELLING INTOXICATING LIQUOR TO A MINOR.—NO CRIME WHERE SALE IS MADE IN GOOD FAITH,—An indictment charging a sale of "intoxicating, spirituous, vinous and malt liquors," to a minor, is good. Because various kinds of liquor are alleged to have been sold does not render the indictment bad for duplicity. A person making a sale, after proper caution, to a minor, believing him not a minor, is not guilty of the offense.—*Kreamer* v. *State.*—Filed April 14, 1886.—Ind.

SERVICE BY PUBLICATION.—AFFIDAVIT OF NON-RESIDENCE.—DUE DILIGENCE.—An affidavit for order of publication which avers that after issue of summons and due diligence exercised to make service, and defendants could not be found, and further avers that said defendants reside in another state these facts are *held* sufficient on which to issue an order for service by publication.—*Kenedy* v. *N. Y. Life Ins. Co.*—Filed March 25, 1886.—N. Y.

SETT-OFF AND COUNTER-CLAIM.—CONSTRUING PLEADINGS.—REPLYING SET-OFF.—Where an action is brought on a note and the plaintiff has an account against the maker of the note, and the maker sets off an account against the note, the plaiutiff may plead his account as a set-off against the defendant. In construing pleading, accounts properly filed therewith must be considered and may control.—*Blount* v. *Rick.* —filed March 31, 1889.—Ind.

SPECIFIC PERFORMANCE.—ACTION CANNOT BE MAINTAINED BY ONE IN DEFAULT.—Where one purchased premises of a widow knowing that her title was derived through her husband's will, and that she held it subject to her husbands debts, and when a quit-claim deed is tendered he refuses the same, he places himself in default and cannot subsequently maintain an action for the specific performance of the contract of sale.—*Enrich* v. *White.*—Filed April 13, 1886.—N. Y.

SHERIFF.—ACTION AGAINST, FOR FALSE RETURN—INSUFFICIENCY OF INFORMATION.

—Where a warrant issued and placed in the hands of the sheriff who failed to make the arrest, an action was brought against him for making false returns. The information charged that he "did willfully and corruptly omit and delay to serve and execute said process as he was in duty bound to have done," *Held* defeetive, in that, it did not charge that the person named in the warrant escaped by reason of such delay.—*State* v. *Walworth.*—Filed April 30, 1886.—Vt.

SPECIAL ASSESSMENTS FOR PAVING STREET—DOES NOT INCLUDE GRADING.—Where owners of abutting lots are assessed for paving a street such assessment cannot be made to cover the expense of filling or grading the street A contractor who has done the work of filling, grading and paving a street, and received the certificates for the same, can enforce payment by the city although the assessment be void.—*Scofield* v. *Council Bluffs.*—Filed April 23, 1886.—Ia.

STATUTE OF FRAUDS.—BILL OF SALE.—VENDOR RETAINING POSSESSION.—The statute of frauds admits of no excuse for the vendee leaving chattles capable of removal, in the possession of the vendor, nor can there be a joint possession by the vendor and vendee. Proof of good faith will not overcome the failure to comply with the requirements of the statute.—*Bassinger* v. *Spangler,*—Filed April 26, 1886.—Colo.

STATUTE OF FRAUDS.—PART PERFORMANCE OF CONTRAT.—PROMISE TO CONVEY.—A bill for specific performance of a contract must allege a good cause of action in equity or at law. It is a good and sufficient answer to a bill for specific performance that no part of the contract has been performed, and no consideration passed.—*Clifford* v. *Heald.*—Filed March 2, 1886.—Mass·

STATUTES.—INTERPRETATION OF—AMBIGUITY OF PREAMBLE.—In interpreting a statute where the preamble is ambiguous and the meaning of the whole of the act is clear, the preamble will not be allowed to modify the act. If the meaning of the act is ambiguous reference may be had to the preamble to explain the whole.—*Tripp, City Treas.* x. *Goff.*—Filed April 1, 1886.—R. I.

STATUTE OF LIMITATIONS.—EFFECT OF IN EQUITABLE ACTION—BAR TO ACTION AT LAW ONLY.—The statute of limitations bars legal remedies only but courts of equity frequently refer to such statute as furnishing an equitable limit as well as legal which will bar recovery of any particular demand.—*Arnett* v. *Finney.*—Filed April 28, 1886.—N. J.

STATUTE OF LIMITATIONS.—NEW PROMISE MADE TO A STRANGER—NOT BINDING.—Where a debt is barred by the statue of limitations, and the debtor in conversation with a third party acknowledges the debt, it does not revive the debt unless it was intended at the time by the debtor to do so. A new promise in order to revive the debt must be positive and explicit.—*Parker* v. *Remington, adm'r.*—Filed April 3, 1886.—R. I.

STATUTE OF LIMITATIONS.–WHEN APPLICABLE.—WHEN BEGINS TO RUN.—Where persons occupy fiduciary relations of great confidence and trnst it will not be held strictly that the statute of limitations begins to run as soon as the trustee is in default on a parol contract. If a son persuades his mother to convey land to him, on a promise to reconvey it which he never fulfills, equity will not permit the statute of limitations to bar an action for recovery of the land.—*Bohm* v. *Bohm.*—Filed March 26, 1886.—Colo.

STATUTORY LIEN ON JUDGMENT FOR ATTORNEY'S FEE.—NOTICE—FILING AN ASSIGNMENT IN COURT.—An attorney for a judgment creditor, in order to obtain a statutory lien on a judgment for his fees, must give notice of his claim to the judgment debtor. The judgment debtor is a stranger to any contract made between the judgment creditor and his attorney.—*B. & C. Smelting Co.* v. *Plese.*—Filed March 26, 1885.—Colo.

STOPPAGE IN TRANSITU.—WHEN IT TERMINATES.—The right of stoppage *in transitu* continues during transportation and until the goods have reached the actual possession of the vendee. The right still exists while the goods are in the warehouse at the point of destination, awaiting the payment of freight and delivery.—*Symns* v. *Scholten.*—Filed May 7, 1886.—Kans.

STREET RAILWAY.—DAMAGES FOR PERSONAL INJURY.—BURDEN OF PROOF.—In an action for damages for personal injury sustained by a collision of the street cars, where the jury was instructed that the burden of proof rested on plaintiff to show that the defendant company alone was guilty of negligence, the defendant company cannot avail itself of exceptions to the instructions—*People's Ry. Co.* v. *Lauderbaugh.*—Filed April 5, 1886.—Pa.

SUPPLEMENTARY PROCEEDINGS—WHAT COEPLAINANT MUST AVER IN THE COMPLAINT. In proceedings supplementary to and in aid of execution, the complainant must aver in his affidavit that the debtor unjustly refuses to apply the funds sought to be reached in the payment of the debt.—*Mitchell* v. *Bray.*—Filed April 21, 1886.—Ind.

SWEARING JURORS.—DISCRETION OF COURT AS TO WHETHER A CHALLENGE SHALL BE MADE BEFORE OR AFTER SWORN.—It is within the discretion of the court whether the prisoner shall challenge an individual juror before or after he is sworn. A juror having said that "if the defense of insanity is interposed I have a prejudice against it," does not render him incompetent to sit in the case.—*Foople* v. *Carpenter.*—Filed April 13, 1886.—N. Y.

TAKING OF LAND BY RAILWAY COMPANY. SETTING ASIDE AN INQUISITION.—Where the findings of the court are supported by reasonable evidence the court will not set aside an inquest on motion of defendant. His remedy, if he has any, is to appear on the trial, take exceptions to adverse rulings and appeal from the judgment, or pay costs and take a new trial.—*Greenleaf* v. *B. F. & C. I. Ry. Co.*—Filed March 26, 1886.—N. Y.

TAKING ORDERS FOR GOODS BY SAMPLE.—NOT PEDDLING.—A SINGLE SALE.—Where a party travels with samples, taking orders for goods to be manufactured, he is not a peddler. A sample sale of an article is not an offering of goods for sale "in a public place or from house to house"—*Town of Spencer* v. *Whiting.*—Filed April 23, 1886.—Iowa.

TAXATION AND EXEMPTION.—TERMS OF THF CHARTER OF THE ILLINOIS CENTRAL RY. COMPANY.—The charter of the Illinois Cen. Ry. company grants exemption from taxation of all property necessary in construction and operating the road; but this does not include warehouses which may be constructed for the purpose of doing a warehouse business.—*Ill. Ceutral R. R. Co.* v. *Hodges.*—Filed March 28, 1886.—Ill.

TAXATION.—PERSONAL EXAMINATION OF PROPERTY BY ASSESSOR.—WHEN OATH TO BE MADE.—In the assessment of bank stocks it is not necessary that the assessor examine the stocks personally, and it is not necessary that the oath of the assessor be made, verifying the statement, on any particular day. —*McMahon, Rec.* v. *Palmer.*—Filed April 13, 1886.—N. Y.

TAX DEED.—EXECUTED BY THE COUNTY CLERK TO HIMSELF.—Where the county clerk holds a tax sale certificate and he being required to execute all tax deeds, executes a deed to himself and has it recorded, such deed is not absolutely void and, after the statute of limitations has completely run in its favor it will be held to be valid and not even voidable.—*Barr* v. *Randall.* Filed April 9, 1886.—Kan.

TERM OF OFFICE OF COUNTY CLERK.—WHEN HE MAY NOT SERVE UNTIL HIS SUCCESSOR IS ELECTED AND QUALIFIED.—Where a county clerk has already served eight

years he cannot hold over and serve until his successor is elected and qualified. If his successor does not or cannot qualify the office becomes vacant at the end of the term and it becomes the duty of the county commissioners to fill the vacancy. —*Gorman* v, *State.*—Filed April 16, 1886. —Ind.

TOWN INSURANCE COMPANY.—LOSS BY FIRE CAUSED BY RAILWAY COMPANY.—ASSIGNMENT OF CLAIM.—Where a fire is started by the negligence of a railway company and property, which is insured by a local company destroyed, if the company settle the loss for less than the claim and pay it, it may take an assignment of the claim and collect the whole claim of the railway company, without regard to the amount it paid in adjusting and settling with the assured.—*H. F. Mut. Ins. Co.* v. *C. M. & St. P. Ry. Co.*—Filed April 6, 1886.—Wis.

TOWNSHIP SUPERVISORS.—POWER TO EMPLOY ATTORNEY TO PROSECUTE OR DEFEND AN ACTION IN BEHALF OF THE TOWN.—The supervisor of an unincorporated town has power to employ counsel to prosecute or defend an action on behalf of the town. Where such counsel has been employed and the services performed with the acquiesence of the town, it will be held to have ratified the act of the supervisor in the employment of the attorney.—*Town of Bruce* v. *Dickey, Ex'x.*—Filed March 27, 1886.—Ill.

TRESPASS.—ACTION BY ONE IN POSSESSION—MEASURE OF DAMAGES.—In an action hy one in possession of lands, not the owner, against highway commissioners for trespass, in destroying a hedge fence, it was *held* that such action would lie and that damages of $204 for the destruction of 102 rods of hedge fence was not excessive.—*Shoup* v. *Shields.*—Filed March 27, 1886.—Ill.

TRANSFER OF INSURANCE POLICY.—APPLICATION NO PART OF POLICY UNLESS ATTACHED.—Under the act of May 11, 1881, the statements made in an application for insurance cannot be made a part of the policy unless it be attached to that policy. Where a transfer of property was made and the insurance agent approved of the same and gave notice to the home office of the company, and about a month subsequently the property was destroyed by fire, the company was held to have approved the transfer,—*Imperial Fire Ins. Co* v. *Dunham.*—Filed March 29, 1886.—Pa.

TRIAL.—CRIMINAL LAW.—REASONABLE DOUBT.—In trial for a crime the rule, that the jury must be satisfied of the defendant's guilt beyond a reasonable doubt, does not mean that the prosecution must establish beyond a reasonable doubt every circumstance or link in the chain of evidence offered. Charging the jury that they must be satisfied that each link in the chain of evidence has been established beyond a reasonable doubt is error.—*Clair* v. *People.*—Filed April 9, 1886.—Colo.

TRIAL.—INSTRUCTIONS ON QUESTION NOT RAISED BY THE PLEADINGS.—In an action against a railway company for damages for personal injury, where plaintiff alleged and specifically relied upon negligence of his co-employe, and the court instructed the jury that plaintiff might recover if the injury was caused by the negligence of the fireman, it is *held* error.—*A. T. & S. F. Ry. Co.* v. *Irwin.*—Filed May 6, 1886.—Kans.

TRIAL.—WAIVER OF ARGUMENT BY COUNSEL.—Where a case has been tried to the court and at the close of the testimony the plaintiff's counsel asks the opposing counsel, in the presence of the court, if the case shall be submitted without argument, to which the defendant's counsel makes no reply, and it is submitted without argument, the defendant will be held to have waived his right to argue the case, by his silence.—*Piatt* v. *Head.*—Filed May 7, 1886.—Kans.

TRUST DEED.—VOLUNTARY SETTLEMENT FREE FROM FRAUD, MISTAKE OR UNDUE INFLUENCE.—Where a wife owning a separate

estate, executed a deed of trust, settling her property upon her children, the deed having in it no clause of revocation, it is *held* that she had no power subsequently to revoke the same unless she could show that the deed was executed under undue influence or was procured by fraud or under some mistake.—*Keys* v. *Carleton.*—Filed Jany 12, 1886.—Mass.

TRUST FUNDS.—CERTIFICATE OF DEPOSIT BY NATIONAL BANK—INVESTMENT OF TRUST FUNDS.—A national bank is not prohibited from issuing time certificates of deposit. A trustee who, in good faith, invests trust funds in certificates of deposit of a bank in good standing, is not liable for the loss in case the bank fails and the money so invested is lost.—*Hunt, Trustee* v. *Cestui qu Trust.*—Filed May 7, 1886.—Mass.

UNDUE INFLUENCE.—FRAUD OR WRONG MUST ENTER IN TO CONSTITUTE UNDUE INFLUENCE. The exercise of honest argument and persuasion will not constitute undue influence, such as to avoid a deed or will unless the element of fraud or wrong enter into the matter. Where a deed is made for a valuable consideration, although inadequate, it is sufficient to support the deed in the absence of fraud.—*Sturtevant* v. *Sturtevant.*—Filed March 27, 1886.—Ill.

VENDOR AND VENDEE.—AN OVERSTATEMENT OF THE QUANTITY.—ABATEMENT OF THE FIXED PRICE.—Where a vendor sells land, at a fixed price per acre, and fraudulently overstates the quantity of land, and the deed, after specifying the number of acres, contains the words "more or less" the vendee is entitled to an abatement of the purchase price to correspond with actnal quantity of land conveyed.—*Tyler* v. *Anderson.*—Filed April 15. 1886.—Ind.

VENDOR AND VENDEE.—DAMAGES FOR CLOSING A HIGHWAY.—DAMAGE DOES NOT RUN WITH THE LAND.—Damages for the closing of a highway accrue at the time it is closed and it is a personal right of the owner. If the owner conveys the land after the road is closed, the right to damages does not vest in the grantee unless there be an evpress covenant to that effect.—*King* v. *St. Patrick's Cathedral.*—Flle April t3, 1886.—Ind.

VENDOR AND VENDEE.--CONVEYANCE PENDENTE LITE—NOTICE.—PURCHASERS BOUND BY JUDGMENT.—One who purchases real estate *pendente lite* is chargeable with express notice of the suit and its character, and he is bound by the judgment rendered in the case the same as though he had been a party to the suit. To a deed which was unrecorded it is necessary to show that a subsequent grantee had notice of the unrecorded deed.—*Smith* v. *Hodson.*—Filed March 18, 1886.—Me.

VENDOR AND VENDEE.—CONVEYANCE SUBJECT TO AN INCUMBRANCE WHICH IS TAINTED WITH USURY.—Where a grantee takes land subject to a mortgage which is usurious, he cannot avail himself of the defense of usury as against a foreclosure of the mortgage. Where the whole transaction shows that he understood fully the amount of the lien, including the usurious interest, will be treated as part of the consideration. *Essley* v. *Sloan.*—Filed March 27, 1889–Ill.

VENDOR AND VENDEE.—REFORMATION OF DEED.—AGREEMENT—BREACH OF CONTRACT.—Where land was conveyed to a railway company, a part consideration for which was that a depot should be built on the land, in an action on the parol agreement for damages for not building the depot, the introduction of testimony in support of the agreement cannot be denied on the ground that it is tending to a reformation of the deed. The measure of damages in such case is the actual damage or injury sustained in consequence of the failure of the company to perform their agreement.—*West Chester & P. Ry. Co.* v. *Broomall.*—Filed March 1, 1886.—Pa.

WAIVER OF GUARANTY—CONDITIONAL

SALE.—LEASE.—Where party leased some timber land, with the privilege of cutting and removing the timber, and a promissory note for a given sum was made by the lessee and delivered to the lessor, for the payment of which the lessor was to hold the lumber cut on the premises, and after the maturity of the note the lessor granted the lessee the privilege of going on and cutting and removing lumber, the lessee becoming insolvent made an assignment, and it is *held* that the lumber at that time cut and being removed from the land belonged to the assignee, the lessor having waived his lien upon the same.—*Wilkie* v. *Day*.—Filed January 18, 1886.—Mass.

WAIVER.—INSURANCE.—OVER-INSURVNCE AND FALSE CLAIM.—If the insured commits a breach of the conditions of the policy, and the company knowing of such breach collects the premiums, it waives the breach. Over-insurance will not vitiate the policy, but in case of loss, an over-estimate of the loss will. False statements in the application for insurance, written by the company's agent without the knowledge of the assured, will not vitiate the policy.—*Stone* v. *Hawkeye Ins. Co.*—Filed April 23, 1886.—Iowa.

WARRANT ISSUED ON INSUFFICIENT AFFIDAVIT.—.LIABILITY OF PLAINTIFF.—Where a warrant is issued in a civil action on insufficient affidavit, for the arrest of the defendant, the plaintiff is liable in an action of trespass, but the party who serves the warrant assumes no liability, if he has no knowledge of the fact of the insufficiency of the affidavit.—*Murdock* v. *Killips*.—Filed April 6, 1886.—Wis.

WAYS.—POWER OF SUPERVISORS.—COMPELLING THE BOARD OF SUPERVISORS TO APPOINT APPRAISERS AND ASSESS DAMAGES.—The board of supervisors have power to order repairs on a highway, although it is the ordinary duty of the overseer to do it. In a writ to compel the board to appoint the appraisers, to assess and award damages caused by repairs on a highway it is not necessary to describe the highway, by metes and bounds in the writ.—*Smith* v. *Bd. of Supervisors*.—Filed May 15, 1886.—Wis.

WATER-COURSES.—RIPARIAN RIGHTS.—DIVERSION OF STREAM BY A PRIVATE CORPORATION.—A private corporation has no more right to divert a stream of water from its course and deprive the riparian owner of his rights than an individual or natural person has, and neither can do so without making proper compensation to the owner. —*Lux* v. *Haggin*.—Filed April 26, 1886.—Cal.

WIFE'S SEPARATE ESTATE.—HUSBAND DOES NOT BECOME HIS WIFE'S CREDITOR BY PAYING TAXES ON HER PROPERTY.—WIFE'S EARNINGS.—A husband who pays the taxes on the separate property of his wife cannot claim that he is her creditor for the amount paid. Money earned by and received by a wife for keeping boarders belong to the husband and not the wife.—*Hamill* v. *Henry*. —Filed April 23, 1886.—Iowa.

WILL.—AFTER-ACQUIRED PROPERTY.—REVOCATION OF WILL.—Where a testator intended by his will to devise after-acquired property, and a trnst deed in force at the time of making the will is revoked by him before his death, the title reverting to testator it is the same in effect as after-acquired property.—*Morey* v. *Sohier*.—Filed March 12, 1886.—N. H.

WILLS.—ANTE-NUPTIAL AGREEMENT—EFFECT UPON A WILL.—Where a man and woman enter into an agreement in view of their approaching marriage, whereby the woman is to retain the same control of her property as if she remained unmarried, and she makes a will in which she bequeathes all her property to her children, the agreement is valid as to all property she owned at the time it was executed.—*Osgood* v. *Bliss*.—Filed April 1, 1886.—Mass.

WILL.—AMICABLE SETTLEMENT OF AN ESTATE AMONG THE HEIRS.—PROBATE OF THE

WILL AFTER SUCH SETTLEMENT.—Where the heirs of a decedent agree upon a settlement of and distribution of the estate, independent of the will of the decedent, the settlement is binding and final, and one of the heirs, subsequently becoming dissatisfied with the settlement, cannot have the will probated when prior to the settlement the existence of the will was known to him.—*Foote* v. *Foote*.—Filed April 29, 1886.—Mich.

WITNESS.—DECEASE OF ONE PARTY TO A CONTRACT—TO WHAT SURVIVING PARTY MAY TESTIFY.—Where one of the parties to a contract dies the presumptions are in favor of sustaining the contract. The surviving party cannot testify to any fact, as between himself and the deceased party, to which the deceased might testify if living.—*Seligman* v. *Estate of Ten Eyck*.—Filed April 8, 1886.—Mich.

WILL.—INTENTION OF TESTATOR AS CONTROLLING EQUITABLE CONVERSION.—The intention of the testator often determines whether property shall be treated as personal or realty. A bequest in money being subsequently invested in realty for the purpose of security shall still be treated as personal property in the settlement of the estate.—*Vandewalker* v. *Rollins*.—Filed March 12, 1886.—N. H.

WILLS.—POWER OF EXECUTOR TO CONVEY REAL ESTATE, LEGAL TITLE IN EXECUTOR.—Where an executor is authorized by the terms of a will to make such disposition of the property as is necessary to carry out the intention of the testator, and he, in good faith, and for a fair consideration, conveys real estate, such conveyance is valid and a court of equity will not cancel the deed.—*Hanson* v. *Brewer*.—Filed April 7, 1886.—Minn.

WILL.—INTENTION OF TESAATOR CONTROLS IN CONSTRUCTION.—A testator holding a bond against the Virginia Military Institute bequeathed $4,000 to Washington College and directed the cancellation of the bond of $1,000, making his bequest $5,000 in all. The bequest being to Washington College and the bond against the Virginia Military Institute, both of which are located in the same town and substantially different departments of the same school, it was held that the legacy was in favor of Washington College only.—*Washington & Lee University's appeal*.—Filed Feb. 1, 1886.—Pa.

WILL.—POWER OF APPOINTMENT AND ABUSE OF THE POWER.—Where a testator bequeaths to his widow a life-estate in his property, with power to dispose of the remainder to his heirs, any exercise of that power, whereby she would procure to herself any pecuniary benefit not intended in the will, is an abuse of the power conferred upon her.—*Shank* v. *Dewitt*.—Filed April 21, 1886.—Ohio.

WILL.—REVOCATION OF.—REMARRIAGE OF TESTATOR AFTER MAKING WILL.—INCREASE OF THE ESTATE.—The legislature having established certain modes by which a will may be revoked, the court cannot ignore the statutory provisions and declare the will revoked by implied intentions of the testator. The death of legatees, marriage of the testator without subsequent issue, and a large increase in the value of the estate after execution of the will, do not, necessarily, work a revocation.—*Hoit* v. *Hoit*.—Filed March 12, 1886.—N. H.

CHARITIES.—FORCE OF BY-LAWS FOR THEIR REGULATION.—PUBLIC POLICY.—The charter of a charitable institution provided for its management as might be prescribed by-law. Among the rules or by-laws, it was provided that any one entering to receive the benefits of the institution should transfer to it all the property they had. An applicant for admission falsely represented that he had no property and, being admitted and cared for until his death, it was found that he was possessed of $1,200 worth of property. *Held* that the institution was entitled to the property.—*Aged People's Home* v *Hammerbacker*.—Filed March 10, 1886—Md

Killy v. *Mayor of Baltimore.*
Filed Oct., 1885.—Md.

(The establishment of the grade of streets may be done either before or after condem. nation proceedings or before work of paving is begun.)

McGarrahan v. *Lavers.*
Filed April 3, 1886.—R. I.

(In an action for false imprisonment, it appeared that the defendant had directed an officer to take plaintiff into custody and the officer did so. *Held* that he was responsible for the arrest as it was directed and authorized by him.)

In Re Lindsley.
Filed Jan. 7, 1886.—N. J.

(The court may order an examination of an alleged lunatic, but where a preponderance of evidence is in favor of the finding of lunacy, and two experts testify in opposition to the finding, a new commission should be appointed and the alleged lunatic examined in the presence of the jury.)

Schuyler v. *Schuyler.*
Filed Jan. 14, 1886.—N. J.

(A man who seduces a woman and to avoid prosecution marries her and immediately abandons her, may be compelled to pay her a separate maintenance.)

In Re Spring Street, Reading.
Filed April 12, 1886.—Pa.

(Where proceedings for the opening of a street have been commenced in the court of quarter sessions instead of common pleas, and prosecuted to final judgment without objection, the proceedings will be sustained.)

Garrett v. *Jones.*
Filed April 9, 1886.—Md.

(No action will lie for obstruction o light or view by the erection of adjoining houses in a city. It is *damnum abesque injuria.*)

Schulting Ex'x. v. *Schulting.*
Filed April 17, 1886.—N. J.

(The general rule is that a grant of power to sell to trustees includes a power to mortgage, when the object of the trust can be accomplished by mortgage. The power to sell will be so construed as authorizing a mortgage when it is necessary for the preservation of the estate, but not merely for improvement of the estate.)

Uhl v. *Beatty.*
Filed Dec. 11, 1885.—N. J.

(A debtor may prefer one or more of his creditors and his undertaking to do so is not in conflict with the statute of frauds.)

State v. *Lockwood.*
Filed April 18, 1886.—Vt.

(The transposition of the letters "e" and "a" in the word "steal', in an indictment so as to make the word "stael" does not invalidate the indictment. Where a witness is testifying a second time in the same case, it is not an error to allow him to state why his testimony on different trials differs.)

Bemis v. *Central Vt. Ry. Co.*
Filed April 27, 1889.—Vt.

(Fxpert testimony is not admissible on a question that is familiar to men in the ordinary walks of life.)

Sawyer v. *Hebard's Estate.*
Filed April 23, 1886.—Vt.

(A parent or child cannot recover for support furnished each other unless it is shown that there was an express contract between them.)

Merrill, Admr. v. *North Yarmouth.*
Filed April 7. 1886.—Me.

(In an action against a town for the death of a person by reason of bad condition of highway, the plaintiff must show that deceased exercised due care.)

City of Olney v. *Wharf.*
Filed Jan. 25, 1886.—Ill.

(Individuals suffering damage from the laying of a railway track on a street or highway, cannot sustain an action for damages against the city for the same.)

Granite St. Mut. Aid Ass'n v. *Porter.*
Filed May 1, 1886.—Vt.

(A mutual life insurance company not organized under the laws of this state is not entitled to license to do business in the state unless it has assets of $100,000 and enough more to balance outstanding liabilities.)

Baysinger v. *People.*
Filed Jan. 25, 1886.—Ill.

(On the abolishment of the office of supervisor, it is the duty of the supervisor to deposit the account book, kept by him, in the county clerk's office.)

Naugatuck v. *Smith.*
Filed Feb. 22, 1886.—Conn.

(A judgment in bastardy proceedings may be rendered against the defendant although he be not present.)

City of Philapelphia v. *Rickley.*
Filed April 9, 1886.—Pa.

(A warrant properly and regularly drawn on the city treasurer is a valid claim against the city, and although it is required that the Comptroller approve such warrants, yet his refusal to approve does not invalidate the claim.)

Berridge v. *Glasser.*
Filed April 5, 1886.—Pa.

(A grant to a man and his heirs for a term of years reserving rent, is a lease.)

Davis v. *Gay.*
Filed may 7, 1886.—Mass.

(An owner of an appartment house is not an inn-keeper in that sense which renders him responsible for the loss of property of a guest.)

McClaren v. *Percival.*
Filed April 29, 1886.—N. Y.

(A mortgage executed by a wife upon her separate property and delivered to her husband and used by him in obtaining an extension of the liabilities of the firm of which he is a member, is valid, although she did not know at the time of delivery of the mortgage what use was to be made of it.)

Paulitscle v. *N. Y. C. & H. R. Ry. Co.*
Filed April 20, 1886.—N. Y.

(The purchase of a railway ticket gives the holder no special right to take any particular train and the company is not bound to hold a train beyond the schedule time for his accommodation.)

Staie v. *Anderson.*
Filed May 4, 1886.—Ohio.

(The act of March 26, 1886, is declared invalid as being special legislation as it applied only to the city of Akron,)

Buttrick v. *Tilton.*
Filed Feb. 17, 1886.—Mass.

(In a writ of entry the allegation of the demandants that they were seized "in their demesne as of fee" is equivalent to the allegation that they were seized in fee-simple.)

Commonwealth v. *Logoris,*
Filed Jan. 30, 1886.—Mass.

(Where an action is brought in the municipal court and after judgment, an appeal is taken to the superior court, it is too late to move to quash the complaint.)

Woodward v. *Spuer,*
Filed Feb. 27, 1886.—Mass.

(A note given by a husband to his wife, or conversely by the wife to the husband, for money loaned, is void and cannot be enforced against the husband's estate.)

In Re Manhattau Ry Co.
Filed April 27, 1886.—N. Y.

(Where an assessment for street improvements was not made in accordance with the requirements of statute it cannot be modified and reduced, but the whole assessment is void.)

Iglehert v. *State.*
Filed April 21, 1886.—Ind.

(Where a guardian dies having in his hands money belonging to his ward an action by the newly appointed guardian against the administrator of deceased for the money will lie without a demand made.)

Gable v. *Wetherholt.*
Filed March 27, 1886.—Ill.

(A tenant is estopped from denying the title of his landlord, but this does not prevent him from purchasing an outstanding title and after the expiration of his term of tenancy and the surrender of his possession then asserting his title against his former landlord.)

Pickering v. *State.*
Filed April 21, 1886.—Ind.

(In an action to collect drainage assessment, the only proper exhibit is a copy of the assessment.)

I. B. & W. Ry. Co. v. *Green Admx.*
Filed April 20, 1886.—Ind.

(In an action by the wife for the death of her husband caused by railway train at a cross-of a highway, plaintiff must show by direct evidence or by circumstances which establish the fact, that her husband was free from any negligence or she cannot recover.)

Hauck v. *Graham.*
Filed April 16, 1886.—Ind.

(A surety who pays a note weich he might have sucessfully resisted may compel contribution from one who subsequently signs the note as surety.)

Conn v. *People.*
Filed March 27, 1886.—Ill.

(An assault with a deadly weapon is an assault with intent to murder. The intent and malice may be proved or may he inferred from circumstances. It is not essential that there be an actual battery.)

Kadish v. *Chicago.*
Filed March 12, 1886.—Ill.

(A municipal corporation may abandon condemnation proceedings at any time before payment of damages assessed.)

Umlauf v. *Umlauf.*
Filed March 27, 1886.—Ill.

(Where an action has been brought by a wife against her husband for separate maintenanee and judgment rendered against her this does not estop the husband from maintaining an action for divorce.)

People v. *Willet.*
Filed April 13, 1886.—N. Y.

(An indictment which alleges the ownership of property, that it is of value above $25 and specfiically describes the property and avers that defendant "did feloniously steal, take and carry away," sufficiently charges the crime of grand larceny.

White v. *Old Dominion S. S. Co.*
Filed April 13, 1886.—N. Y.

(It is no error to refuse the admission of evidence of a fact already admitted.)

Hoagland v. *See, Assignee.*
Filed Jan. 7, 1886.—N. J.

(The orphan's court has jurisdiction and power to compel a settlement and distribution by an assignee.)

Seymour v. *Over River School Dist.*
Filed Feb. 23, 1886.—Conn.

(Where the salary of a public school teacher has been earned, it may be attached.)

Hansen v. *Hansen.*
Filed March 24, 1886.—Ill.

(The habitual use of grossly improper language by a husband to his wife is sufficient grounds on which to found an action for separate maintenance.)

Dawes v. *Berry.*
Filed April 16, 1686.—Maine.

(Where property has been wrongfully attached and is held under the attachment an action of trover and convertion will lie.)

Barton v. *P. M. Relief Association.*
Filed March 12, 1886.—N. H.

(Where an association contracts to pay to a party named, a certain sum upon the death of the party contracted with, it is in form and effect a contract of life insurance. A member of such association having the right to

designate the beneficiary of the fund to be paid at his death, having designated one, he s not estopped from changing it and designating another beneficiary.)

Wilcox v. *Kendall.*

Filed March 12, 1886.—N. H.

(A grantor having reserved in a deed the right to take all the water from a cistern on the granted premises which the grantee shall not use, it is held that the grantee was entitled to use so much of the water as was reasonably necessary in the enjoyment of the premises.)

People v. *Charcon.*

Filed April 13, 1886.—N. Y.

(On cross-examination counsel should stop a witness if he is not proceeding to answer properly. To wait until the witness has unfolded his answer and then move to strike the answer out it is too late.)

Erskine v. *Glidden.*

Filed April 12, 1886.—Maine.

(The statute denying the right to defend on a contract made on Sunday unless the value received be refunded, applies to a promissory note made before the enactment of the statute but maturing after its enactment.)

Houghton v. *Moore.*

Filed April 1, 1886.—Mass.

(Where a brick building is constructed with a solid partition wall extending the heighth of the building each portion will be held to be a separate tenement.)

Bd. of Supervisors v. *Highway Commis'n'rs.*

Filed March 27, 1886.—Ill.

(The commissioners of highways have authority to rebuild or repair bridges in cases of emergency without waiting for the action of the board of supervisors.)

Perley v. *Mason.*

Filed March 12, 1886.—N. H.

(A creditor holding a claim against an insolvent debtor in another state is not bound by proceedings in insolvency in debtor's state unless he voluntarily becomes a party to the proceedings. It is the domicile of the creditor that determines the jurisdiction in such case.)

Howard v. *Maine Industrial School.*

Filed April 16, 1886.—Maine,

(The filing of a bid for certain work does not constitute a contract and even the acceptance of it, where the bidder is required to furnish a bond, does not make the contract complete until the bond is furnished.)

Continental Life Ins. Co. v. *Asncraft.*

Filed April 5, 1885.—Pa.

[Where a policy of insurance is executed and deiivered and the local agent remits the company the premium, allhough the assured has not paid the local agent, the company is bound by the policy.]

City Savings Bank v. *Whittles.*

Filed March 12, 1886.—N. H.

(A policy of insurance obtained by one on his own life and made payable to an. other, the assured cannot assign the policy as a security for his own debt.)

Baker's Appeal.

Filed April 5, 1886.—Pa.

[A garnishee having made answer to the writ, cannot in subsequent collateral proceedings set up a statement of facts at variance with his answers.]

U. S. Nat. Bank v. *Burton et. al.*

Filed May 12, 1886.—Vt.

[A notice of a protest of a draft signed "Burton & Sowles" was addressed to "O. A. Burton" and "Edward A. Sowles" instead of io "Burton & Sowles." *Held* that such notice was sufficient.]

Johnson's Ex'rs v, *Dubel.*

Filed Feb. 1, 1886.—N. J.

(A party cannot be complainant, as executor, and defendant, as holder of the legal title in a bill to foreclose a moatgage.)

Smal z v. *Ryan.*
Filed April 5, 1886.—Pa.

[Under the plea of payment the defendant has the right of openlng and closing, the burden of proof resting on him. The court inclines to the observance of the spirit of its own rules.]

Sossong v. *Rosar.*
Filed April 5, 1886.—Pa.

[Where a judgment, entered by default or confession, is subsequently opened and defense permitted, the plaintiff must prove his case the same as if no judgment had been entered.]

Camden v. *Belgrade,*
Filed April 7, 1886.—Maine.

(It is in the discretion of the court when parol evidence of the contents of lost writings may be admitted. It is not necessary that a witness should be able to give the exact language of the lost writing. The substance of the paper is sufficient.)

Cobb v. *Corbitt.*
Filed April 28, 1886.—Maine.

(A party failing to build his part of a division fence is liable for double the expense of building the same. To entitle a recovery of this penalty the party seeking to recover must show that he has built the whole of the fence.)

Mount, Adm'x. v. *Manhattan Co.*
Filed May 7, 1886.—N. J.

(The fact that an assignee in bankruptcy has not realized the money value of property assigned within the time limited by taw, does not give the right to recover the property.)

Swayze's Ex'rs v. *Carter.*
Filed March 22, 1886.

(A party interested in the performance of an act and remains silent so as to induce the belief that he acquiesces in it, he cannot afterwards challenge the act, to the prejudice of those who acted on the belief of his acquiescence.)

Emery et al v. *Batchelder.*
Filed April 28, 1886.—Maine.

(Where the assets of an estate are insufficient to cover the legacies named in a will, and the deficiency was not anticipated by the testator, the legatees shall share *pro rata* in the deficiency.)

Le Baugetel v. *Mann Ex'r.*
Filed March 12, 1886.—N. H.

(It is a universally established rule that land is considered as personal property when the testator directs the sale thereof. Where a testator directed the executor to erect a monument to his memory it is a charge upon the land devised to the executor.)

Pickering v. *Pickering.*
Filed March 12, 1886.—N. H.

(In an action for accounting between cotenants, the defendant may have credit for cost of repairs, made without the knowledge of plaintiff, if such repairs have increased the income of the common property.)

Low v. *Concord Ry. Co.*
Filed March 12, 1886.—N. H.

(Damages for land assessed and taken for right of way by a railway company, must be paid before the company can enter upon and take the land. The owner, by receiving the amount of the award, does not thereby waive his right of appeal.)

NEW PUBLICATIONS.

American Probate Reports—Containing recent cases of general value decided in the courts of the several states on points of probate law with notes and references by Wm. W. Ladd, Jr., Esq. Vol. 4.—New York, Baker Voorhis & Co.

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THE IRON HEART.

Encased in every human frame is a wonderful machine, or force pump, which drives the blood through the arteries to all parts of the body, from whence it is returned to the machine through the veins. This machine is the heart. and together with the arteries, veins and capillaries, constitute the medium through which circulation is maintained in the system.

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The Chicago Law Journal.

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ADMINISTRATORS.—APPOINTMENT OF ONE OF A CLASS EQUALLY ENTITLED.—Where a decedent leaves children, but no widow, it is in the discretion of the register which of the children he appoints administrator. Insolvency is a disqualification for an administrator, but poverty is not if a sufficient bond can be obtained. Seniority may incline the register to the appointment of the oldest child but the selection is in the discretion of the register.—*Levan's Appeal.*—Filed March 22, 1886.—Pa.

ADMINISTRATOR.—POWER TO SELL CORPORATE STOCK.—ANCILLARY ADMINISTRATION.—The domicillary administrator may, in the absence of prohibition by statute, sell and assign stock in a foreign corporation, and the corporation may take up and cancel the certificate and issue a new one to the assignee.—*Luce, Adm'r* v. *M. & L. Ry. Co.*—Filed March 12, 1886.—N. H.

ADVERSE POSSESSION.—COLOR OF TITLE.—LIMITATIONS.—Where a party obtains an interest in a property by a tax title, and conveys his interest to a third party who resides thereon for ten years, the one in possession acquires an absolute title in fee by adverse possession which cannot be attacked.—*Reilly* v. *Blazer.*—Filed May 12, 1886.—Mich.

AGENT AND BROKER—WHEN REAL ESTATE AGENT'S COMMISSION IS EARNED.—Where an agent is employed to procure the sale of real estate, and he introduces to the owner a party able and willing to buy on the terms offered, if the owner refuses to sell, the agent can demand and is entitled to receive his commission. Where the agent acts in bad faith and not in the interest of his principal he may thereby forfeit his commission.—*Pratt* v. *Patterson's Ex'rs.*—Filed April 19, 1886.—Pa.

APPEAL.—PROCEEDINGS WHEN A CASE IS REMANDED.—Where the court of appeals remanded a case in chancery, with the order "that all equities be reserved and that the parties have leave to apply for further relief" and the plaintiff applies by petition to be restored to the position lost by nonperformance. *Held* that he should proceed by bill and not by petition.—*Trotter* v. *Heckscher.*—Filed May 25, 1886.—N. J.

ATTORNEY AT LAW.—GIFT TO ATTORNEY BY HIS CLIENT.—BURDEN OF PROOF.—To establish a gift from a client to his attorney, in whatever form the question may arise, it devolves upon the attorney to show affirmatively that it was voluntary and made with full knowledge, and without any undue influence. The presumption is against its validity and the presumption must be overcome by proof.—*Whipple* v. *Barton.*—Filed March 12, 1886.—N. H.

APPROPRIATION OF LAND FOR RIGHT OF WAY.—AMENDMENTS.—MATTERS OF DISCRETION.—The instrument of appropriation of land in condemnation proceedings may be amended after the report of appraisers have been filed and issues joined on exceptions. The decision of a trial court allowing or refusing such amendment may be reviewed by the supreme court.—*C. & G. S. Ry. Co.* v. *Jones.*—Filed April 21, 1886.—Ind.

ASSIGNMENT FOR BENEFIT OF CREDITORS.—BONA FIDE PURCHASES.—PRIORITY OF RECORD.—Two deeds conveying the same property for a good and valuable consideration take precedence as of the date of record, but where one deed is made in satisfaction of a pre-existing debt and another for an immediate money consideration, this rule does not hold. Where one conveyed land and received payment for the same and subsequently makes a general assignment for the benefit of creditors and the deed of assignment is recorded before the former deed of conveyance, this will not pass title to the assignee.—*Tyler* v. *Aberg.*—Filed May 10, 1886.—Md.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.—MADE IN ANOTHER STATE—NO EFFECT HERE.—Where a citizen of another state makes an assignment for the benefit of his creditors, and some of his property assigned is situated in this state, and is attached by a creditor, a citizen of this state, subsequent to the assignment, the court will sustain the attachment proceedings where the creditor has not assented to or become a party to the assignment.—*Faulkner* v. *Hymen.*—Filed May 11, 1886.—Mass.

ASSIGNMENT.—WHAT MUST BE AVERRED IN A BILL IN EQUITY.—Any writing or act which clearly shows the purpose of a party to make over a fund to another, amounts to an assignment in equity. A bill in equity must allege all the facts necessary to entitle the complainant to ' relief.—*Brokaw* v. *Brokaw's Ex'rs.*—Filed May 18, 1886.—N. J.

ATTORNEY.—INSTRUCTIONS TO PREPARE A DEED—NOT PRIVILEGED.—Instructions given to an attorney relative to the preparation of a deed are not ordinarily privileged communications. In an action to enforce a trust, an express trust in real estate cannot be proved by parol.—*Todd* v. *Munson.*—Filed April 5, 1886.—N. J.

BANKS AND BANKING.—COLLECTION BY A BANK.—BANKER HOLDS FUNDS IN TRUST FOR OWNER.—Where a bank receives bills or drafts for collection and actually collects the funds, it holds the funds as trustee for the owner. A bank having made collections and while holding the funds it makes an assignment for the benefit of creditors, the assignee cannot claim the funds thus held in trust for the owner.—*McLeod* v. *Evans, assignee.*—Filed May 15, 1886.—Wis.

BANKS AND BANKING.—STOPPAGE OF PAYMENT OF CHECKS.—A depositor having deposited a check on another bank for collection, and learning that the bank where he deposited became insolvent, ordered the payment of the check stopped by the bank on which it was drawn, it is *held* that the bank receiving the check on deposit might maintain an action against the maker or drawer of the check and recover.—*Brooks* v. *Bigelow.*—Filed May 8, 1886.—Mass.

BANKRUPTCY.—DISCHARGE.—ATTACHMENT OVER FOUR MONTHS PRIOR TO FILING PETITION.—Where a creditor has attached property of the debtor more than four months prior to the filing of a petition in bankruptcy, and subsequently the property is released by the giving of an undertaking, the release of the property will not deprive the attaching creditor of his lien acquired.—*Holladay* v. *Hare.*—Filed May 14, 1886.—Cal.

BILL FOR REVIEW.—ADMINISTRATOR'S ACCOUNT.—EQUITY.—A trustee *de bonus non* brought suit against the bondsman of his predecessor, trustee to recover funds unaccounted for. The bondsman thereupon

filed a petition in the orphan's court praying that the account of the administrator of the deceased trustee, be opened to show where the funds had gone which were unaccounted for. *Held* that the petition was defective in that it did not state specifically the alleged errors of law or fact, nor the reasons for opening the account.—*O'Rielly's Appeal.* —Filed March 15, 1886.—Pa.

CHATTEL MORTGAGE.—ATTACHING CREDITOR.—ASSIGNMENT OF MORTGAGE.—Where goods which are exempt from levy and sale are subject to a chattel mortgage and a creditor attaches other goods belonging to the mortgagor which are not exempt, the attaching creditor is not entitled to an assignment of the mortgage upon tendering to the mortgagee the amount of his claim or debt secured by the mortgage.—*Cochrane* v. *Rich.*—Filed May 8, 1886.—Mass.

CLAIM FOR SERVICES.—IMPLIED CONTRACT.—FAMILY RELATIONSHIP.—The law ordinarily implies a contract of hiring where labor has been performed by one for another, but where the parties sustain a family relation this presumption is rebutted. A grandson, having cared for his grandparents for a time the law presumes that it was done gratuitiously in the absence of an express contract.—*Moyer's Appeal.*—Filed April 5, 1886.—Pa.

COLLATERAL SECURITY.—AUTHORITY OF COLLECTION AGENT.—CHATTEL MORTGAGE. —An attorney at law or any one having in hand a claim for collection will be presumed to have authority to take a chattel mortgage, in his own name, as collateral security, to secure the payment of the debt, if the circumstances seem to make it necessary for him to do so. Where a chattel mortgage has been executed but not filed, and the mortgagee takes possession of the mortgaged goods, his possession cures any defect in the mortgage or the failure to file for record.—*Dolan* v. *Van Demark.*—Filed May 7, 1886.—Kans.

CONFLICT OF LAW.—DIVORCE GRANTED IN ANOTHER STATE—QUESTION FOR JURY.— Where a decree of divorce has been granted by the courts of another state and the parties were married in this state and had lived here, the question of jurisdiction of the court granting the decree may be raised and properly submitted to the jury. If the court granting the decree had jurisdiction of the person in fact, then full credit must be given to the judgment but the recital in the judgment that the court had jurisdiction is not conclusive.—*Gregory* v. *Gregory.*— Filed March 27, 1886.—Maine.

CONTRACTS.—ILLEGAL SALE OF INTOXICATING LIQUOR.—A liquor dealer of Massachusetts sells liquor to a citizen of this state, which sale is illegal here, but legal if made in Massachusetts. *Held* that he cannot maintain an action in this state for the collection of the purchase price of the same.—*Fisher* v. *Lord.*—Filed March 12, 1886.—N. H.

CONTRACT.—STATUTE OF FRAUDS.—PART PERFORMANCE.—A parol contract to be performed in one year, and not relating to real estate, is not within the statute of frauds. Partial performance of a parol contract brings it within the statute.—*Horner, Ex'r* v. *Frazier.*—Filed March 10, 1886.—Md.

CONTRACT.—OFFER AND AWARD OF PRIZES OFFERED IN A CONTEST OF SKILL.— Where prizes are offered as an incentive to effort in a contest of skill, and the award is to be made by a committee or jury appointed for the purpose, the contract of the party offering the prizes is to give them according to and subject to the award of the committee. If the committee decide that no competitor is entitled to a prize because of the low grade of all the competitive exercises then no prize can be demanded.— *Trego* v. *Pa. Academy of Fine Arts.*—Filed April 19, 1886.—Pa.

CORPORATION,—ACTION TO COMPEL TRANSFER OF STOCK BELONGING TO THE ESTATE OF

A DECEDENT.—In a bill, in equity, to compel the issue of new stock by a corporation in lieu of stock of a decedent, where the stock has been sold, the administrator of the estate of the deceased must be made a party. Where an officer of a corporation, whose duty it is to make transfers of stock, is ordered to do so, and where the transfer of the stock is intended as a gift to the transferee, if the donor dies before the transfer is made the order cannot be enforced.—*B. R. & F. Brick Co.* v. *Mali.*—Filed March 10, 1886.—Md.

CORPORATION.—EXEMPT PROPERTY.—FIERI FACIAS.—Property absolutely necessary to the exercise of the franchise of a corporation is exempt from levy and sale, but where a levy was made and property sold and it is found by the court that the property sold was not necessary to the exercise of the franchise, this rule of law does not apply.—*Appeal of P. & R. Ry. Co.*—Filed March 15, 1886.—Pa.

CORPORATIONS.—INJURY TO PASSENGERS ON A RAILWAY TRAIN.—POWER OF DIVISION SUPERINTENDENT TO EMPLOY PHYSICIANS TO ATTEND INJURED PASSENGERS.—Where a railroad accident occurs and passengers are injured the agreement of the division superintendent to employ physicians to attend the injured passengers is not binding upon the company unless he is expressly authorized to do so. He will not be presumed to have such authority.—*Union Pac. Rp. Co.* v. *Beatty.*—Filed May 7, 1886.—Kans.

CORPORATION.—MUTUAL INSURANCE COMPANY.—ACTION ON CERTIFICATE OF INSURANCE.—Where the husband was a member of a mutual aid association which entitled his widow, upon his death, to a benefit of $1,000, and after his death, upon refusal of the association to pay the amount suit is brought and judgment is obtained in favor of the widow of the deceased. A *fi. fa.* issued and was returned *nulla bona.* The association was subsequently dissolved. An action was then brought against the directors of the association as individuals. *Held* that a judgment of non-suit was properly rendered, as an action could not be maintained against them individually.—*Brown* v. *Orr et. al.*—Filed April 5, 1886.—Pa.

CORPORATION.—POWER OF OFFICER TO PLEDGE CORPORATE PROPERTY.—The president and treasurer of a corporation has no power to mortgage the corporate property to secure the payment of a pre-existing debt, unless especially authorized to do so, and such mortgage, unless ratified by the corporation, is void.—*England* v. *Dearborn.*—Filed May 8, 1886.—Mass.

CONSTITUTIONAL LAW.—MORE THAN ONE SUBJECT EXPRESSED IN TITLE.—Where an act entitled "An act to redistrict the state of Nevada, prescribe the number and salaries of district judges, and fix the places for holding courts," it is *held* that this is not in coflict with the provision that the title to an act shall not contain more than one subject.—*State* v. *Co. Commissioners.*—Filed May 15, 1886.—Nev.

COVENANT.—INCUMBRANCE ON LAND ASSUMED BY THE GRANTOR.—Where a party purchased land, subject to a mortgage which he assumes to pay, and subsequently conveys the land by a quit claim deed, in which he covenants to save his grantor harmless from any incumbrance placed upon the land by him, the non-payment of the existing incumbrance when he bought the land is not a breach of his covenant with his grantee.—*Foster* v. *Woodward.*—Filed Feb. 25, 1886. Mass.

COURT STENOGRAPHER.—COMPENSATION.—CERTIFICATE OF JUDGE CONCLUSIVE.—Where a stenographer has rendered services in the court and the judge of the court has certified the amount due him as compensation, it is the duty of the board of freeholders to pay the same. The certificate of the judge is conclusive and may be enforced by *mandamus.*—*Knight* v. *Bd. of Freeholders.*—Filed Dec. 12, 1885.—N. J.

DEDICATION OF LAND FOR PUBLIC USE.—NO PARTICULAR FORM NECEESARY.—INTENTION.—No particnlar form is necessary for the dedication of land for public use. The intention of the grantor is the main question, which may be evidenced by the acts without any express declaration. Where land is dedicated to the public and there is no municipal body to receive and accept it, a use of the land by the public may be a sufficient acceptance of it by the public.—*Maywood Co.* v. *Maywood.*—Filed May 15, 1886.—Ill.

DEED.—ACKNOWLEDGEMEET OF PAYMENTS.—CONSIDERATION.—Where parents owning a farm convey it to their two sons in consideiation of the sons supporting them during their lifetime. and in the deed it is expressed "In consideiatiou of our support during our natural lives, and sixty dollars, paid to us annually to our satisfaction," the defendants claimed that the latter clause was an acknowledgement of the receipt of the amouut named. *Held* that it referred to future payments to be made.—*Gage, Adm'r* v. *Hoyt.*—Filed March 10 1886.—Vt.

DEED.—ABSENCE OF GRANTOR'S NAME IN BODY OF THE DEED.—ACKNOWLEDGEMENTS.—Where a grantor grants and conveys and properly acknowledges the deed to certain lands, and by mistake his name does not appear in the deed, it is not a fatal error. In question of boundary lines, natural landmarks prevail over magnetic lines.—*Hronska* v. *Jauke.*—Filed May 15, 1886.—Wis.

DIVORCE.—EXTREME CRUELTY.—CONDONATION.—In a bill for divorce by the wife on the grounds of extreme cruelty, it was shown that the defendant at one time angrily pushed her away from him, at another slapped her roughly on the shoulder, at another he spat in her face, at another he put her out of the house, at another kicked her, and subsequently refused to speak to her for a period of two and a half years. *Held* she was entitled to a decree although she had frequently condoned the offenses.—*Sharp* v. *Sharp.*—Filed March 27, 1886.—Ill.

DEED.—STATEMENTS BY A GRANTEE AS TO THE LIMITATIONS OF HIS TITLE CANNOT AFFECT THE DEED.—Where a woman conveys land to a man who subsequently marries her, and subsequently is heard to state that he has only a life estate in the lands conveyed to him, and that upon his death the land reverted to the grantor's daughter, such statements cannot change the effect of the deed.—*Bowlby* v. *Thunder.*—Filed April 5, 1886.—Pa.

DESCENT.—LAND ACQUIRED BY DESCENT AND EXCHANGED FOR OTHER LANDS.—LIABILITY OF MARRIED WOMEN FOR DEBT NOT FOR HER BENEFIT.—Where title to land is acquired by descent and this land is exchanged for other lands the latter is held by purchase and not by descent. A mortgage executed by a married woman, to secure the debt of another, in which it is recited that it is for her benefit, will not enlarge her legal capacity when in fact the mortgage was made to secure the debt of another.—*Orr* v. *White.*—Filed May 14, 1886.—Ind.

ELECTIONS.—ACT OF 1885.—ELECTION COMMISSIONERS.—PROVISION FOR SALARY.—The board of election commissioners cre ated by the act of 1885 is held to be a body corporate and may incur debts for necessary expenses. The provision that the commissioners salary shall be paid by the county is held constitutional. When the law is adopted by a city the commissioners have jurisdiction over the whole county in which the city is located.—*Wetherell* v. *Devine.*—Filed March 27, 1886.—Ill.

EQUITY.—BILL TO REMOVE CLOUD FROM TITLE.—JOINDER OF PARTIFS AT THE TRIAL TERM.—Where it appears at the trial that there are parties not in court whose interest may be affected by the judgment, they may be joined as parties. Where real estate is attached in a suit at law, the plaintiff may maintain a bill in equity to remove a cloud

from the title, although it be not of record. —*Perham, Trustee* v. *H. Fiber Co.*—Filed March 12, 1886.—N. H.

EJECTMENT.—LAND CHARGED WITH THE SUPPORT OF A THIRD PARTY.—Land devised subject to a charge for the support of a person for life, the grantee of the devisee cannot maintain an ejectment against the person entitled to support from the land during life. The plaintiff in ejectment must recover, if at all, on the strength of his own title.—*Castor* v. *Jones.*—Filed May 15, 1886.—Ind.

ELECTIONS.—MANDAMUS.—NOTICE OF ELECTION.—ELECTION TO FILL AN UNEXPIRED TERM.—Where the county clerk fails to give proper notice of an election to be held, any citizen has a right to maintain *mandamus* as a remedy. An election to fill a vacancy caused by death of a circuit judge, is for the remainder of the unexpired term only.—*State* v. *Ware, clerk.*—Filed April 26, 1886.—Oregon.

EMBEZZLEMENT.—MUNICIPAL BONDS UNISSUED.—POSSESSION BY COMPTROLLER.—Where municipal bonds have been signed and left in the possession of the comptroller of the city, but not issued, the wrongful conversion of them constitutes embezzlement. The fact that the city may not be liable on them does not affect the case.—*State* v. *White.*—Filed May 15, 1886.—Wis.

EQUITABLE CONVERSION.–CONSTRUCTION OF WILL.—CLAIM AGAINST ESTATE.—Where a testator provided in his will as follows "I desire all my other estate &c. * * be sold and the proceeds arising therefrom be invested in first bonds and mortgages," it is *held* that the words "I desire" are equivalent to "I will" and that these words worked a conversion of testator's real estate.—*Appeal of Philadelphia.*—Filed May 10 1886.—Pa.

EQUITY.—CANCELLATION OF A DEED OF TRUST.—SETTING UP TITLE FROM ANOTHER SOURCE.—In an action to cancel a trust deed and quiet title to lands, in the plaintiff alleging that the trust has been terminated, the trustee is not estopped from setting up title otherwise acquired, in defense.—*Cheever* v. *Converse, adm'r.*—Filed May 11, 1886.—Minn.

EQUITY.—CREDITOR'S BILL TO SELL REAL ESTATE.—DEBTOR OWNING OTHER PROPERTY THAN THAT ON WHICH CREDITOR HAS A LIEN. —Where a creditor has a specific lien on real estate which has been fraudulently conveyed he may proceed in equity to set aside the conveyance, but if the debtor has other property which is available such conveyance will be allowed to stand and the other property sold to satisfy the debt.—*Christopher* v. *Christopher.*—Filed March 10, 1886.—Md.

ESTOPPEL.—ACTION FOR A TORT AGAINST SEVERAL DEFENDANTS.—ACTION AGAINST ONE CONCLUSIVE.—Where a tort is committed by several persons the injured party has his election of a joint action against the wrongdoers, or a separate action against any one of them, but an action and judgment obtained against one estops him from bringing an action against the others.—*Westbrook* v. *Mize.*—Filed May 7, 1886.—Kans.

EXECUTORS AND ADMINISTRATORS.–JUDGMENT.—PREFERENCE ON WIDOW'S EXEMPTION.—A widow's exemption of $300 under act of 1851, takes precedence of a judgment entered against the estate of her husband but not against the lien of a mortgage. Where the widow or creditor's file their claims against a mortgagee when it is known to be utterly useless, they are liable for the costs.—*Kaufman* v. *S. L. & B. Association.* —Filed May 10, 1886.—Pa.

EXECUTION.—DISTRIBUTION OF FUNDS.—ACTION ON SHERIFF'S BOND.—An execution issued by an alderman and levy made on defendant's goods, and on the following day two executions issue from the court of common pleas and the same goods are seized by the sheriff on a writ of *fieri facias* and sold by the sheriff, and the proceeds applied

to the payment of the two latter judgments. The plaintiff in the former judgment took an appeal to the common pleas and notified the sheriff that he claimed the funds. He then brought suit on the sheriff's bond. *Held* that the appeal was pending at the time of the distribution of the funds and that the plaintiff's therefore had no standing. *Mason* v. *Smith*.—Filed May 10, 1886.—Pa.

EXECUTOR.—CONTESTING PROBATE.—COUNSEL FEES.—When a caveat is filed against a will after probate the executor may be allowed counsel fees out of the estate, but where the counsel has an agreement with the sole legatee as to fees he must look to the legatee for payment of the same. Where the agreement is between the counsel and the legatee, the orphan's court has no power to enforce the agreement.—*Gorten* v. *Perkins*.—Filed June 23, 1885.—Md.

EXECUTION.—SETTING ASIDE SHERIFF'S SALE.—GROUNDS FOR.—Property sold December 6, 1884, by the sheriff and deed executed for the same December 20, 1884. The sheriff's grantee takes possession, and on February 2, 1885 application is made to set aside the sheriff's sale and cause the deed to be cancelled on the ground that there was a mistake in law and also that the price was inadequate. *Held* that neither of the reasons was sufficient.—*Evans* v. *Maury*.—Filed April 19, 1886.—Pa.

EXECUTORS.—CONSTRUCTION OF WILL.—PENDENCY OF A BILL FOR CONSTRUCTION.—The fact that a bill praying for the construction of a will is pending is no bar to the appointment of an executor. Where the will directs certain parties to appoint an executor, if they fail to do so, the court will compell the appointment.—*Landon et. al.* v. *Huitfeldt et al.*—Fied May 17, 1886.—N. J.

EXECUTORS.—VERBAL PPOMISE TO PAY LEGACY.—PAYMENT OF DEBTS IN PREFERENCE TO LEGACIES.—A promise of an executor to pay a legacy must be in writing or the legatee cannot maintain an action on the promise. Where a testator directed certain legacies to be paid by the executor and also to pay his debts and funeral expenses, the executor does not err in paying the debts even though the estate is insufficient to pay the legacies.—*Smith* v. *Carroll*.—Filed April 23, 1886—Pa.

EXECUTORS AND ADMINISTRATORS.—WIDOW'S EXEMPTION.—Where the widow notified the executor of her husband's estate that she claimed $300 in cash under the act of April, 1851, and the executor at the time of the notice had less than $300 on hand, but had other property which was subsequently converted into cash. *Held* that she was entitled to only so much cash as he had on hand at the time of the notice and not any part of the cash subsequently obtained.—*Finney's Appeal*.—Filed May 17, 1886.—Pa.

EXECUTORS AND ADMINISTRATORS.—TITLE TO INSURANCE MONEY.—RELEASE BY THE HEIR.—The title to the estate of a decedent vests in the executor or administrator and not in the heir, and a release of a claim due the estate, executed by the heir is no bar to an action by the administrator to recover on the same.—*Shuger* v. *Gorman, adm'r*.—Filed May 17, 1886.—Pa.

FALSE PRETENSES.—SUFFICIENT PROOF OF.—SELLING AN INTEREST IN A CONCERN.—On an indictment for obtaining money by false pretenses, where the defendant sold an interest in a patent medicine business representing that he owned an interest in the same and that he owned a patent under which the medicine was compounded, of great value, it being subsequently shown that he did not own such patent and that the stock was not of value as represented. *Held* that the charge in the indictment was sufficiently proven.--*Commonwealth* v. *Blood*.—Filed May 7, 1886.—Mass.

FORECLOSURE OF MORTGAGE.—CERTIFICATE OF SALE.—DESCRIPTION.—The certifi-

cate of sale by the sheriff to his grantee, is necessary to pass title. Where there was a misdescription in the certificate of sale, it is *held* that title to the property intended to be conveyed did not pass.—*Smith* v. *Buse.*—Filed May 26, 1886.—Minn.

FORGERY.—USE OF THE NAME OF ONE DECEASED.—INDICTMENT.—In an indictment alleging forgery, where the person whose name has been forged is deceased, it is proper to charge that the intent was to defraud his estate. The estate of a decedent may in law be regarded as a person.—*Billings* v. *State.*—Filed April 23, 1886.—Ind.

FIRE INSURANCE.—OWNERSHIP.—OCCUPANCY OF PREMISES INSURED.—Where a party bid in property at sheriff's sale and paid his money for the same and the sheriff, by mistake, made the deed to another, the bidder has an equitable title on which he may maintain an action on an insurance policy. Where a policy of insurance was conditioned that it would be void if the building was not occupied, and it was partially occupied at the time of issuing the policy and continued to be occupied in the same partial manner until destroyed by fire. *Held* that the company was liable under the policy.—*Lebanon M. Ins. Co.* v. *Erb.*—Filed March 15, 1886.—Pa.

FRAUDULENT CONVEYANCE.—BILL OF SALE WITH AN AGREEMENT TO RECONVEY.—Where a bill of sale is made and property transferred, coupled with an agreement to reconvey, where the effect is to hinder and delay creditors, the conveyance is tainted with fraud and equity will not enforce or sustain such conveyance.—*Goggenheimer's Appeal.*—Filed March 1, 1886.—Pa.

FRAUDULENT CONVEYANCE.—BY HUSBAND TO WIFE.—IMPROVEMENTS MADE BY WIFE.—Where a husband promises his wife that if she will join in the execution of a mortgage that he will convey to her certain lands, and in pursuance of such promise does convey the lands to her many years subsequently, such lands will be subject to judgments obtained against the husband prior to such conveyance, but the wife may claim reimbursement for any improvements made on the land by her.—*Borden* v. *Doughty.*—Filed Nov. 23, 1885.—N. J.

FRAUDULENT REPRESENTATIONS.—MECHANICS LIEN.—Where a party has a right to file a mechanics lien and is induced not to do so by false representations of the owner, he may have an action against the owner on the ground of the fraudulent representations.—*Alexander* v. *Church.*—Filed April 16, 1886.—Conn.

FUNDS DEPOSITED BY TRUSTEE.—BANK BOOK HELD BY CESTUI QUE TRUST.—EVASION OF STATUTE.—Where one holding trust funds deposited it in a savings bank in his own name, and delivered the bank book to the *cestui que trust*, telling him of the deposit, upon the death of the trustee and depositor, it is *held* that the funds go to his administrator to be divided according to the statute of distribution. *Nutt, Admr.* v. *Morse.*—Filed May 8, 1886.—Mass.

GAMBLING CONTRACTS.—SETTING ASIDE SECURITY GIVEN BY A WIFE FOR HER HUSBAND'S DEBTS.—Where a married woman has executed a mortgage on her separate estate to secure a note given by her husband and endorsed by her, and the proceeds used in speculating in futures or gambling contracts, and she files a bill to set the mortgage aside, the court can inquire into all the facts of the case.—*Tantum* v. *West.*—Filed Jan. 22, 1886.—N. J.

GUARANTOR.—PRIMARY AND CONTINUING LIABILITY.—STATUTE OF FRAUDS.—When the object of the promise is to become guarantor to the promise, for the debt of the third party, the promise made before or after the promise of the principal or at the same time is within the statute and must be in writing. If the promise is primarily for the promisor's own benefit, but incidentally

to pay the debt of another, it is not within the statute.—*Nugent* v. *Wolfe.*—Filed February 1, 1886.—Pa.

GRAND JURY.—SELECTION OF.—RECITALS OF CLERK.—The recitals of the clerk of the court as to the manner of impaneling the grand jury is no part of the record. Errors or irregularity in the selection of the grand jury may be taken advantage of by plea in abatement.—*Henning* v. *State.*—Filed May 11, 1886.—Ind.

HOMICIDE.—TESTIMONY OF DEFENDANT ON PRELIMINARY EXAMINATION MAY BF ADMITTED ON TRIAL.—Where a defendant, charged with murder, testifies on preliminary examination and his testimony reduced to writing, it may be admitted against him on his trial if it be properly identified. Where a witness in testifying admits that his former testimony concerning the same matter was false, full interrogation should be allowed as to what led to the false testimony.—*State* v. *Miller.*—Filed May 7, 1886.—Kans.

HOMICIDE.—EVIDENCE.—ACTIONS OF ACCUSED IMMEDIATELY BEFORE COMMITTING THE CRIME.—In a trial on an indictment for murder, it is competent to put in evidence the actions of the accused immediately before the killing for the purpose of showing that he was armed, although such testimony may disclose another offense.—*State* v. *Kernan.*—Filed March 12, 1886.—Md.

HUSBAND AND WIFE.—LEVYING ON WIFE'S LAND FOR HUSBAND'S DEBT.—INJUNCTION.—A creditor will not be enjoined from levying upon lands in which it is alleged the debtor has an interest, but having levied on lands belonging to the debtor's wife, if it appear that the wife's title is clear, a sale of of the land will be restrained by injunction.—*Appeal of Walker, Assignee.*—Filed May 3, 1886.—Pa.

HUSBAND AND WIFE.—ATTACHING GOODS IN THE POSSESSION OF THE HUSBAND WHICH ARE CLAIMED BY HIS WIFE.—When property in the possession of the husband is seized for his debt, and is claimed by the wife, the presumption of law is that it belongs to the husband, and the burden of proof is on the wife to establish her title and she must establish it very clearly to overcome the presumption.—*Kingsbury, Garnishee* v. *Davidson.*—Filed May 17, 1886.—Pa.

HUSBAND AND WIFE.—CONTRACT OF WIFE.—MALPRACTICE.—A married woman who has been deserted by her hnsband may bind her estate by a contract for medical assistance. In an action, where the question of malpractice by a physician is in issue, it is not competent to allow a wound on a broken limb which has been healed, in the treatment of which the malpractice is alleged, to be exhibited to the jury. It is error for the court to allow the jury to inspect the wound or limb.—*Carstens* v. *Hanselman.*—Filed May 12, 1886.—Mich.

HUSBAND AND WIFE.—MORTGAGE OF WIFE'S SEPARATE PROPERTY TO SECURE PRE-EXISTING DEBT.—Under the law as it existed in 1863, a married woman executing a mortgage to secure a pre-existing debt of her husband's without any consideration passing, may void her mortgage on the ground of want of consideration. When a consideration is recited in a mortgage it will be presumed that there was no other consideration than that recited.—*Bridges Admr.* v. *Blake.*—Filed May 12, 1886.—Ind.

HUSBAND AND WIFE—PRESUMPTION OF MARRIAGE.—RECOGNITION OF ILLEGITIMATE CHILDREN.—From the fact that a woman calls herself Mrs. B—— the presumption of her marriage to a man of that name does arise. Where the father of illegitimate children supports the mother and the children and subsequently takes them into his own family, and addresses them as his children and they address him as their father, this is a legal recognition of them as his children.—*Blair* v. *Howell.*—Filed April 21, 1886.—Iowa.

HUSBAND AND WIFE.—SEPARATE ESTATE OF THE WIFE.—HUSBAND'S DEBTS.—Where a married woman is a legatee and purchases the interest of her co-devisees by borrowing money from a building association to pay for the same, giving to the association a mortgage on the whole property, the property becomes her separate estate and is not subject to her husbands debts.—*Simpson* v. *Kenedy*.—Filed April 5, 1886.—Pa.

HUSBAND AND WIFE.—SEPARATE ESTATE OF WIFE.—EQUITY.—Where a wife purchases part of a tract of land and pays for the same with her own money, and at the same time the husband buys the balance of the same farm, and gives his note in payment for the same, and he and his wife jointly execute a mortgage on the whole farm as security for the payment of his note, this will not bind the wife in her separate estate.—*Jones* v. *Ewing*.—Filed May 13, 1886.—Ind.

INJUNCTION.—JUDGMENT FOR COSTS.—APPEAL.—Where a judgment for costs was rendered upon motion of one of the parties and subsequently an injunction issued restraining the issue of an execution on the judgment, it is *held*, that an error by a court having jurisdiction cannot be rectified by an injunction but must be by appeal. The appeal from the order issuing the injunction is dismissed.—*Micklin Adm'r* v. *Hoblin*.—Filed May 3, 1886.—Oregon.

INSOLVENCY.—COMPOSITION AND EXTENSION.—AGREEMENT NOT SIGNED BY THE REQUISITE NUMBER.—Where a banking firm became insolvent and an agreement of extension was conditioned upon all signing it whose claim amounted to $100 and upwards before it became operative, was not signed by all of such claimants, yet at a meeting of the creditors it was decided to proceed under the agreement as though signed by the requisite number. A creditor for a sum greater than $100 who was not present at the creditor's meeting and had not signed the agreement subsequently attaches a debtor of the insolvent firm. *Held* that he is not affected by the agreement of composition and extension to which he was not a party.—*Bradenbush* v. *Bushong*.—Filed April 5, 1886.—Pa.

INSOLVENT DEBTOR.—NOMINAL TRANSFER OF A CLAIM TO A CITIZEN OF ANOTHER STATE AND ATTACHMENT ISSUED.—Where a debtor and creditor are both citizens of this state, and the creditor knowing that the debtor is insolvent, nominally transfers his claim to a citizen of another state who brings suit and garnishees funds of the debtor in that state, an injunction will issue restraining the prosecution of such suit in another state, it being a wrong upon other creditors.—*Cunningham* v. *Butler*.—Filed May 11. 1886—Mass.

INSOLVENCY.—FRAUDULENT TRANSFER OF PROPERTY IN PREFERENCE OF CREDITORS.—Where an insolvent debtor transfers property for the purpose of preferring creditors and the person to whom the property is transferred knows the purpose of the debtor. the law presumes the transaction to be fraudulent and the transaction will be held to be in fraud of the insolvent laws.—*Abbott. Assignee* v. *Shepard*.—Filed May 8, 1886.—Mass.

INTOXICATING LIQUOR.—PROSECUTION FOR ILLEGAL SELLING.—DUE PROCESS OF LAW.—Where an information is filed charging the illegal selling of liquor and with it the sworn statements of witnesses describing the offense charged, and the defendant allowed to appear and defend and meet the witnesses face to face, to have process to compel attendance of witnesses in his behalf, and is given a public and impartial trial by jury, the proceeding is clearly by due process of law.—*State* v. *Whisner*.—Filed May 7, 1886.—Kans.

INTOXICATING LIQUOR.—SUFFICIENCY OF INDICTMENT.—ALLEGATION AS TO TIME.—In an indictment for illegally selling intoxicating liquor, the time when a certain building was used for such purpose was alleged

in the indictment, but the time of making sale was not alleged. *Held* that the time of commission of the offense was sufficiently set forth.—*State* v. *Buck.*—Filed April 7, 1886.—Maine.

INSOLVENCY.—DISCHARGE IN MARYLAND CANNOT BE PLEADED IN DEFENSE OF AN OBLIGATION CONTRACTED IN ANOTHER STATE.—When one subscribed for corporate stock in a corporation in Virginia, and the contract of subscription is wholly controlled by the law of Virginia, a party to the contract cannot plead in defense, his discharge under the insolvent laws of this state.—*Glenn* v. *Clobaugh.*—Filed March 10, 1886.—Md.

JUDGMENT.—ALTERATION OF NOTE.—OPENING JUDGMENT.—Where judgment has been entered on a promissory note, and subsequently a motion is made to open the the judgment on the ground that the note had been altered as to the amount, it is sufficient equitable relief if the judgment be opened as to the amount in dispute.—*Weaver* v. *Painter.*—Filed May 10, 1886.—Pa.

JUDGMENT.—ASSIGNMENT OF.—PRIORITY OF JUDGMENT LIENS.—Where a party owning two separate judgments against the same defendant, assigns the later one with an agreement that, in case of judicial sale of defendant's property, the judgment assigned shall take precedence of the prior jadgment, and subsequently the prior judgment is also assigned to another party who has no notice of the agreement accompanying the assignment of the later judgment. *Held* that the lien of the prior judgment is not affected by the agreement.—*Winton'z Appeal.*—Filed March 22, 1886.—Pa.

JURISDICTION OF DISTRICT COURTS AND JUSTICES.—AMOUNT OF CLAIM.—In actions on claims not exceeding $100 the district court and justices of the peace have concurrent jurisdiction. On all claims over $100 the district court has exclusive original jurisdiction.—*St. P. F. & M. Ins. Co.* v. *Houson.*—Filed May 12, 1886.—Dak.

JUROR—COMPETENCY OF.—AFFIDAVITS AND COUNTER AFFIDAVITS.—PREVIOUSLY FORMED OPINION.—Where objections to a verdict are founded upon the incompetency of jurors, who are alleged to have formed previous opinions, and affidavits in snpport of such objections are rebutted by the affidavits of the jurors themselves, the objection will be overruled. The temporary illness of a juror after retiring from the bar, who recovers sufficiently to participate in the deliberations of the jury, will not vitiate the verdict.—*Hughes* v. *People.*—Filed March 27, 1886.—Ill.

JUSTICE OF THE PEACE.—CONSTITUTION OF 1879.—By the constitution of 1879 the number of justices of the peace was diminished, but the office of justicc of the peace was in no other way modified. If a justice elected, after the adoption of the constitution, fails to qualify, or if one appointed by the board of supervisors fails to qualify, the former justice is entitled to hold over until his successor qualifies.—*French* v. *Santa Clara Co.*—Filed May 17, 1886.—Cal.

LARCENY —BURDEN OF PROOF.—POSSESSION OF STOLEN PROPERTY.—One indicted for larceny and evidence shows that he has recently been in possession of the stolen property, this does not shift the burden of proof on him to show how he came into possession of the property. The rule that, a witness having testified falsely, his further testimony may be disregarded, is a rule of permission and not mandatory.—*Hoge* v. *People.*—Filed May 15, 1886.—Ill.

LEASE.—STATUTE OF FRAUDS.—WHAT CONSTITUTES A WRITEN LEASE.—A lease for a term of more than three years, not in writing, is void under the statute of frauds. Where a landlord had negotiations with a tenant with a view to leasing for a term of ten years, and wrote the tenant a letter setting forth the terms and conditions on which he proposed to lease, and the tenant made no answer to the letter but entered and took

possession of the premises. *Held* that this did not constitute a written lease and that he held only as tenant at will.—*Dunn* v. *Rothermel.*—Filed March 22, 1886.—Pa.

LIEN FOR WAGES.—HOW IT MAY BE PREFERRED—NOTICE.—Where a claim for wages is filed in order to entitle it to priority under the act of April, 1872 such facts must be set forth as will show that the claim is entitled to priority. It must be shown that the labor was performed within the time limited in the act.—*Livinggood's Appeal.*—Filed April 26, 1886.—Pa.

LIFE INSURANCE.—INSURABLE INTEREST.—ASSIGNMENT BY HEIRS.—A policy of insurance made payable to a stranger who has no insurable interest in the life of the assured, is void as to the beneficiary. A beneficiary who has no insurable interest in the life of the assured, having paid the premium on the policy, is entitled to a return of what he has paid with interest only and the proceeds of the policy less the premium so paid goes to the estate of the assured.—*Ruth* v. *Katterman.*—Filed March 24, 1886.—Pa.

LIFE INSURANCE.—TO WHOM PAYABLE.—LEGAL REPRESENTATIVES.—Where by the terms of a life policy, it is payable to the executors, administrators or assigns of the assured, for the sole use of his children, the only one entitled to receive payment is the administrator of the estate of the assured and he alone can maintain an action for recovery of the same.—*Stowe* v. *Phinney, trustee.*—Filed May 17, 1886.—Maine.

LIBEL AND SLANDER.—ACTIONABLE WORDS WHEN SPECIAL DAMAGES ENSUE.—Words spoken which are not *per se* actionable as a libel may become so if special damages ensue. Where words derogatory, were spoken of an employe which caused the employe to be discharged, although the words were not of themselves actionable for libel, yet by reason of the special damages arising therefrom, an action of libel may be maintained.—*Wilson* v. *Cotlerman.*—Filed March 11, 1886.—Md.

LIQUIDATED DAMAGES.—PROVISIONS FOR IN CONTRACT.—OPTION.—Where a clause in a contract provides for liquidated damages in case of breach, this does not give the party bound the option to purposely default and pay the damages.—*Crane* v. *Peer.*—Filed May 13, 1886.—N. J.

MARINE INSURANCE.—INJURY RESULTING FROM DEFECT IN THE GOODS.—Where damage accrues to goods under a marine policy of insurance from some defect in the goods which was unknown and not specially insured against, the insurer is not liable for the loss.—*P. W. Ins. Co.* v. *Adler.*—Filed March 11, 1886.—Md.

MARINE INSURANCE.—POLICY CONDITIONED FOR A CONTINUANCE BEYOND THE TERM IF ON A VOYAGE.—A policy of marine insurance was issued for a term of one year and conditioned that if on a voyage at the end of the term, the insurance was to be continued until arrival at port of destination at *pro rata* rate of premium. The vessel was on a voyage at the end of the term and did not arrive in port until about five months after the end of the term of the policy. In an action to recover for the premium for that period it is *held* that the assured was bound by the conditions of the policy and the premium could be recovered.—*Ins. Co. of N. A. V.* v. *Rogers.*—Filed April 7, 1886.—Maine.

MASTER AND SERVANT.—FELLOW SERVANT.—NEGLIGENCE AND PERSONAL INJURY.—Where one is employed as switchman and general work around a railway yard, and he is injured through the negligence of a gas-fitter who is laying or extending pipes in and about the yard, he is held to be a fellow servant and cannot recover.—*N. Y. L. E. & W. Ry. Co.* v. *Ball.*—Filed May 10, 1886.—Pa.

MASTER AND SERVANT—DANGEROUS OCCUPATION.—SERVANT OF IMMATURE YEARS. —The rule that a servant assumes the risk of dangers incident to any work in which he engages, is modified in some degree when the servant is a youth of immature years. It is incumbent on the master employing such youth to caution him against the dangers and to use extraordinary care in informing him of his danger.—*Jones* v. *Florence Min. Co* —Filed May 15, 1886.—Wis.

MASTER AND SERVANT.—LIABILITY OF MASTER FOR INJURY TO SERVANT.—The fact that a servant is injured in his employment raises no presumption of negligence on the part of the master. In order that the servant may recover of the master he must show that the master knew of the dangerous condition of the work and that the servant did not and could not have known of the danger, and negligence of the master must be affirmatively shown.—*Wason* v. *West et. al.*—Filed May 17, 1886.—Maine.

MASTER AND SERVANT.—INJURY TO AN EMPLOYE.—NEGLIGENCE.—DAMAGES.—Where an employe was injured while oiling certain machinery which could be put in motion or stopped by the shifting of a belt from a loose to a rigid pulley, it is not culpable negligence of the employer if he leaves the pulley unguarded or unfenced. A young man between 17 and 18 years old is presumed to have the capacity to apprehend his danger.—*Sanborn* v. *A. T. & S. C. Ry. Co.*—Filed May 7, 1886.—Kans.

MASTER AND SERVANT.—NEGLIGENCE.—MINING BOSS A FELLOW SERNANT WITH THOSE WORKING UNDER HIM.—Where a miner is injured by the falling of matter from the roof of the mine, by reason of failure to put up props, when props were furnished and placed at the entrance of the mine for the use and purpose of propping it up, the person injured cannot recover of the owner of the mine for the injury. He is guilty of contributory negligence in that degree which will bar recovery.—*Reese* v *Biddle.*—Filed March 15, 1886.—Pa.

MECHANICS LIEN.—REPAIRS.—BUILDING ON AN ADDITION.—Where an addition has been built on to a house and no repairs made on the old house, a mechanics lien for materials furnished cannot be filed against the old building. Where the description of property in the lien filed, is so indefinite as to leave the identification of property uncertain, the lien is void.—*Linck* v. *Wolf.*—Filed May 17, 1886.—Pa.

MECHANICS LIEN.—LIEN FOR MATERIAL DOES NOT INCLUDE MACHINERY.—A material man has a lien for materials furnished for building, but the lien law cannot be so liberally construed as to give him a lien for machinery purchased for manufacturing the materials used or furnished.—*Basshor* v. *B. & O. R. R. Co.*—Filed March 10, 1886.—Md.

MECHANICS LIEN.—LABOR ON DRAIN PIPE CONNECTING HOUSE WITH SEWER.—Where labor is performed in constructing or connecting a building with the main sewer, by drain pipes from the building to the sewer, a mechanics lien will attach to the building for the same without regard to how far the main is from the building.—*Beatty* v. *Parker.*—Filed May 7, 1886.—Mass.

MINES AND MINING CLAIMS.—ADJACENT MINES NOT ON SAME LEVEL.—Where adjacent mines are being worked, and one is on a lower level than the other, the owner of the lower mine must leave sufficient natural barrier between his own and the other mine to protect himself. The owner of either mine may abandon his mine at any time and if damage ensue to the adjacent mine he is not answerable.—*Jones* v. *Robertson.* —Filed March 30, 1886.—Ill.

MORTGAGE.—CONDITIONED UPON DEFAULT OF ANY INSTALLMENT.—Where it is provided in a mortgage that the whole debt shall become due and payable upon default

in any installment, and upon the happening of such default and the consequent foreclosure of the mortgage, the lien of the mortgage is exhausted.—*Hanson* v. *Dunton.*—Filed May 21, 1886.—Minn.

MORTGAGE—MADE TO A DAUGHTER DISCHARGED BY FATAER.—STATUTE OF LIMITATIONS.—A father having procured a mortgage made to his daughter as an advancement to her, cannot subsequently receive payment and satisfy the same of record. A mortgage note may be barred by the statute of limitations and yet the mortgage may not be barred.—*Carney* v. *Pawlot.*—Filed May 15, 1886.—Wis.

MORTGAGE.—FORECLOSURE.—SALE FOR AN INADEQUATE PRICE.—Where land is offered at foreclosure sale and the highest bid is not sufficient to cancel the mortgage debt, and the land is amply worth much more, it is the duty of the sheriff to adjourn the sale and make an effort to get a better price.—*Brown* v. *Farley.*—Filed May 18, 1886.—N. J.

MORTGAGE.—SALE OF LAND MORTGAGED.—ORDER OF LIABILITY OF PARCELS SOLD.—Where land subject to a mortgage is sold in parcels by the mortgagee,that remaining unsold if any, is subject first to the lien of the mortgage and then the parcels sold are subjected to the lien in the inverse order in which they were sold.—*Mahagan* v, *Mead.*—Filed March 12, 1886.—N. H.

MORTGAGE.—SEVERAL MORTGAGES AND A CONVEYANCE OF THE LAND.—ORDER OF FORECLOSURE.—Where the owner of land executed a mortgage on the same and subsequently executed a second mortgage on a portion of the land, and subsequently sold and conveyed another portion of the land, upon foreclosure of the first mortgage it is held that the land must be sold in the following order: First, the parcel sold and conveyed; second the portion covered by the second mortgage.—*M. Life Ins. Co. N. Y.* v. *Dowden.*—Filed Nov. 23, 1885.—N. J.

MORTGAGE.—PURCHASER OF INCUMBERED PROPERTY—LIABLE FOR DEFICIENCY.—One who purchases property snbject to a mortgage and accepts a deed in which is recited the fact that he assumes the mortgage debt, is liable upon foreclosure of the mortgage for any deficiency. The mortgagee is entitled to subrogation to the rights of the mortgagor.—*Davis* v. *Hulett.*—Filed May 25, 1886.—Vt.

MORTGAGE.—WIFE'S SEPARATE ESTATE.—SECURITY.—It is a well settled rule that a married woman may mortgage her separate estate, if her husband joins in the mortgage, tc secure her own or her husband's debt, or the debt of a stranger.—*Hagenbuch* v. *Phillips.*—Filed March 15, 1886.—Pa.

MUNICIPAL AND CIRCUIT COURT.—CONCURRENT JURISDICTION.—REFERING CERTAIN CASES EXCLUSIVELY TO THE MUNICIPAL COURT.—Where by statute a municipal court is established with jurisdiction concurrent with the circuit court, and subsequently an act is passed taking certain cases exclusively to the municipal court, the act is not in conflict with the constitution. The phrase in a complaint "to be dealt with according to law," and "to answer to such complaint" are synonymous.—*Bookhout* v. *State.*—Filed May 15, 1886.—Wis.

MUNICIPAL CORPORATION.—A QUORUM OF COUNCIL FIXED BY PROVISION IN CHARTER.—RULE OF COMMON LAW.—Where a city charter is silent as to what number of councilmen shall constitute a quorum the common law establishes a majority as a legal quorum. The council cannot by a resolution of its own determine or fix the number necessary to constitute a quorum.—*Weiskell* v. *Mayor of Baltimore,*—Filed March 19, 1886.—Md.

MUNICIPAL CORPORATION.—INJURY FROM FALLING SIGN.BOARD.—KNOWLEDGE OF THE DANGER ON A STREET.—Where a person is injured by the falling of a bill-board erected near to a street, the city is liable for dam-

ages if it had notice of the imperfect manner in which the bill-board was erected. A person knowing that there is more or less danger in walking on a street is not to be thereby debarred from walking thereon and cannot be deemed guilty of contributory negligence in going upon the street.—*Langan* v. *City of Atchison.*—Filed May 7, 1886.—Kans.

MUNICIPAL CORPORATION.—RAILROAD AID TAX.—PLACING UPON DUPLICATE.—Any taxpayer may apply by petition to the county commissioners to have a railroad aid tax placed upon the duplicate and from the decision of commissioners he may appeal to the circuit court. Where such petition is denied he has his remedy either by appeal or *mandamus.*—*Bd. of Commissioners* v. *Montgomery.*—Filed May 14, 1886.—Ind.

MUNICIPAL CORPORATION.—VIOLATION OF BUILDING ORDINANCE.—REMISSION OF HALF THE PENALTY.—Where it is provided that for violation of the building ordinance, if upon notice, the building is made to conform to the ordinance and half the penalty shall abate, this does not deny the right of action. The right to recovery accrues upon the mere violation of the law.—*Signer* v. *Philadelphia.*—Filed April 26, 1886.—Pa.

NECESSARIES FURNISHED TO AN INFANT.—INFANT HAVING AN ESTATE IN PROSPECT.—Where an infant has an estate in prospect, and one knowing this fact cares for the infant by taking it from an alms-house and supporting and caring for it, relying upon the prospective estate for compensation, may compel payment for the same when the infant comes into possession of its estate. *Teainer* v. *Trumbull.*—Filed May 7, 1886.—Mass.

NEGLIGENCE.—BURDEN OF PROOF.—ALLEGATION AND PROOF.—In an action for damages for personal injury, where the plaintiff alleges ordinary care on his part and negligence of the defendant, the burden of proof is on the plaintiff to establish care on his part and negligence on part of defendant.—*Rogers* v. *C. B. & Q. Ry. Co.*—Filed May 15, 1886.—Ill.

NEGLIGENCE.—PROXIMATE OR REMOTE CAUSE OF ACCIDENT.—WHEN A QUESTION OF LAW.—Where the facts are undisputed as to the cause of an accident where injury ensues, it is a question of law for the court to determine whether the negligence charged was the proximate or remote cause. A cause which might and ought to have been foreseen by the wrong doer is the proximate cause if the injury was the probable or natural result.—*West Mahanoy* v. *Watson.*—Filed May 10, 1886.—Pa.

NEGLIGENCE.—RAILWAY CROSSING A STREET IN CITY.—WARNING IN STARTING THE TRAIN.—Where a person is injured while crossing over or under a freight train which stands across a street crossing and there is a conflict of testimony as to whether the train was in motion or standing when the plaintiff attempted to cross, the finding of the jury that the train was standing and the injury was caused by suddenly starting without any warning is conclusive of the negligence of the company.—*Layer* v. *P. W. & B. Ry. Co.*—Filed April 14, 1886.—Pa.

NEW PROMISE.—STATUTE OF LIMITATIONS.—ADMISSION OF DEBT.—Where a debtor owned some land and owed a debt which was barred by the statute of limitations, and in trying to sell his land he said his creditor, naming him, had $2,000 in the land and he wanted to pay him and therefore he wanted to sell. *Held* that this was not such an admission as would imply a new promise and bar the statute.—*Gerhard* v. *Gerhard.*—Filed May 17, 1886.—Pa.

NEW PROMISE.—STATUTE OF LIMITATIONS.—WHAT WILL TOLL THE STATUTE.—Where a statute of limitations has run against a debt, nothing short of a promise to pay, either express or clearly implied, will take it out of the operation of the statute. An admission of the debt which is clear, distinct

and unequivocal, may be sufficient from which the law will imply a promise.—*Shaeffer* v. *Hoffman*.—Filed May 17, 1886.—Pa.

NEGLIGENCE.—TRESSPASSER.—WHEN THERE IS AN IMPLIED RIGHT OF WAY.—Where the owner of two houses, separated only by a narrow alley, suffers the wall of one of the houses to be and remain in bad condition and a boy living in the other house, while passing through the alley-way is injured by the falling of the wall, it is *held* that the boy is not there as a trespasser but has an implied right there, and that the owner of the house is culpably negligent and liable for damages for the injury.—*Schilling* v. *Abernethy*.—Filed April 12, 1886.—Pa.

NEGLIGENCE.—WHAT CONSTITUTES.—REVIEW OF A QUESTION OF FACT.—Negligence is defined as the failure to perform some act required by law, or doing the act in an improper manner. The findings of the lower court of a question of fact cannot be reviewed by the appellate court.—*Nolan* v. *N. Y. & N. H. Ry. Co.*—Filed Jan. 25, 1886.—Conn.

NEGLIGENCE.—DUTY OF RAILROAD COMPANY TO HAVE CARS INSPECTED.—Where a railway employe is injured by the negligence of the car inspector, the company cannot avoid liability for the injury on the ground that the party injured and the car inspector are fellow servants.—*Macy* v. *St. P. & D. Ry. Co.*—Filed May 22, 1886.—Minn.

NEGLIGENCE.—MECHANICS LIEN.—RELEVANCY OF EVIDENCE.—In an action for damages for negligence in not properly filing a mechanics lien which defendants were employed to do, it is held that if plaintiff recovers he must show that damages accrued from the negligence complained of.—*Joy, et al* v. *Morgan*.—Filed May 21, 1886.—Minn.

PARTNERSHIP.—POWER OF ONE PARTNER TO BIND THE FIRM.—One member of a partnership firm has no authority to bind the firm by guaranteeing the debt of a third party. Such guarantee is not within the scope of the firm's business.—*Osborne & Co.* v. *Thompson*.—Filed May 26, 1886.—Minn.

PARTITION.—WHEN QUESTION OF TITLE MAY BE RAISED.—The primary object of proceedings in partition is to sever the unity of possession. The question of title may be incidentally presented and settled and it will be final between the parties as to existing titles.—*Thorp* v. *Hanes*.—Filed May 11, 1886.—Ind.

PARTITION.—TITLE TO REAL ESTATE IN ISSUE.—NEW TRIAL.—In proceedings in partition where the title to real estate is put in issue and adjudicated, a new trial can be demanded as matter of right, but it must be demanded within one year from date of final judgment.—*Kreitline* v. *Franz*.—Filed May 18, 1886.—Ind.

PARTY-WALL.—PERMISSION OF ADJOINING OWNER.—SUBSEQUENT AGREEMENT.—Where a party about to build obtains permission of the owner of the adjacent lot to build the wall over the line, this license does not constitute the wall a party wall. If, by subsequent agreement, the wall is made a party wall, such agreement confers upon each of the owners a cross-easment and rights incident to party walls.—*Field* v. *Leiter*.—Filed May 15, 1886.—Ill.

PAYMENT.—PLEA OF—BY AN ADMINISTRATOR.—In an answer averring payment which contains matter which is mere evidence of payment, a demurrer cannot be successfully interposed. In a plea by an administrator alleging that the debt was paid with moneys belonging to the estate, it is not necessary to specifically allege payment.—*Johnson* v. *Breedlove*.—Filed Jan. 8, 1885.—Ind.

PRINCIPAL AND AGENT.—WHEN COMMISSION IS EARNED.—Where a broker or agent is employed to make a sale of property and he produces a purchaser ready, able and willing to purchase on the terms offered, he has performed his contract and is entitled to

his commission.—*Duclos* v. *Cunningham*.—Filed April 30, 1886.—N. Y.

PARTITION.—BIDS FOR PURPARTS.—BIDS MUST BE IN WRITING.—Parties entitled to partition have the right to bid for any part, but the bid must be for a greater sum than the appraisement and must be in writing. If all the parties in interest appears in open court and orally bid for purparts, one to whom a purpart is allotted cannot subsequently allege that the bids for other purparts should be rejected because they were not in writing.—*Sutton's Appeal*.—Filed May 10, 1886.—Pa

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PARTNERSHIP.—CONTRACT BY ONE PARTNER FOR THE FIRM.—It is within the scope of the power of one member of a firm to procure an endorser of the firm paper and to pledge any security which the firm may have to give, to save the endorser harmless.—*Hopkins* v. *Thomas*.—Filed May 12, 1886.—Mich. ———

PLEADING.—SETTLEMENT OF A PAUPER. —DUPLICITY.—A plea, in the case of a pauper, that he did not have a legal settlement in the town, and that he is not liable to become a charge upon the town, contains two distinct defenses and is bad on demurrer. —*Andover* v. *Mt. Holly*.—Filed May 26, 1886.—Vt. ———

PRACTICE.—EVIDENCE.—INSTRUCTIONS. —The admission of evidence wrongfully, if it does not prejudice the rights of the party against whom it is offered, is no ground for error. In an action for damages for injury to an animal the admission of testimony showing the value of the animal one year before the action was commenced is competent.—*Benton* v. *Smith*.—Filed May 12, 1886.—Mich. ———

PRACTICE.—PLEADING.—TROVER AND CONVERSION.—The appelate court will not notice, in its opinion, errors assigned where the assignment is clearly without substance. In an action of trover and conversion of a promissory note, an admission that defendant was owner of the note in question, 10 months prior to the commencement of the action does not relieve the party from pleading that he is still the owner of the note.—*Murphy* v. *Hobbs*.—Filed Dec., 1884—Colo.

PRACTICE.—INSTRUCTIONS.—MINES.—JUNIOR AND SENIOR LOCATIONS.—CROSS-VEINS.—Instructions to the jury must be in writing. Where two veins of mineral cross each other and the location of one is junior to the other, the junior locator is entitled to the ore found on his vein within the side line of the senior location, except at the point of intersection.—*Lee* v. *Stohl*.—Filed May 17, 1886.—Colo.

PRELIMINARY EXAMINATION.—COMMITMENT.—HELD FOR AN OFFENSE DIFFERENT FROM THAT CHARGED BY DEPOSITIONS.—Where one charged with felony is held on a charge different from that indicated by the depositions the district attorney may proceed to try him on the crime charged by the depositions. If no depositions are returned the district attorney must file an information.—*People v. Lee Ah Chuck*.—Filed April 29, 1886.—Cal.

PRINCIPAL AND AGENT.—SALE BY A BROKER.—LIMIT OF PRICE BY CONSIGNEE.—Where goods are consigned to a broker for sale and on the invoices is written instructions not to sell below a certain price named, if the broker sells for less he is liable for the difference between the price sold for and the price named by the consignee. The fact that the broker had on previous occasions, acted in a similar manner in selling other consignments and his action ratified by the consignee, does not establish a rule which voids his liability for acting contrary to instructions.—*Loehnberg* v. *Atherton*.—Filed May 8, 1886.—Mass.

PRINCIPAL AND AGENT.—NEGOTIATING A LOAN.—CANCELLATION OF MORTGAGE.—Where a party applied to a banker for a loan on mortgage and the banker negotiated a loan of $3500 with which existing mort-

gages were to be cancelled. The loan was made, and before the existing mortgages were cancelled the banker failed, the money being in his possesion. *Held* that the lien of the existing mortgages was not discharged although the mortgagee knew that the money was on deposit for him.—*Engleman* v. *Reuse.*—Filed May 12, 1886.—Mich.

PRINCIPAL AND SURETY.—BONDSMEN.—CONTRIBUTION BY CO-OBLIGORS.—Where one of the joint obligors on a bond, gives to his co-obligors, an agreement in writing under seal, acknowledging his primary liability and that his co-obligors are merely sureties, he is estopped from subsequently alleging that such an agreement was without consideration and cannot call upon them for contribution.—*Zimmerman* v. *Bridges Ex'r.*—Filed March 8, 1886.—Pa.

PRINCIPAL AND AGENT.—EVIDENCE OF AGENT'S AUTHORITY.—Where a principal wrote to his agent saying to him, "I think you had better get rid of some of your old stock," it is held that this did not give the agent authority to sell the principal's horse. The construction of such a letter is for the court and where it was submitted to the jury it is held error,—*Fisher* v. *Moyer.*—Filed May 17, 1886.—Pa.

POOR LAWS.—ORDER OF REMOVAL OF PAUPER.—CONCLUSIVE IF NO APPEAL TAKEN.—The order of court for removal of a pauper from one town to another, unless appealed from, is conclusive of all facts in issue. Where an order was made to remove an illegitimate child and subsequently an order to remove the mother from the same town, the latter order being appealed from but the former was not, it is held, that the order removing the child by implication included the mother also, and was final.—*Pittsfield* v. *Chittenden.*—Filed April 15, 1886.—Vt.

PROOF OF LOST INSTRUMENTS.—BASIS FOR SECONDARY EVIDENCE.—Upon proof of the death of the sheriff, the existence of an execution issued to him may be shown by entry in the execution docket, or by entry in the fee book and entry of sheriff's return and a party who saw the execution in the hands of the sheriff may testify to the fact.—*Bruns* v. *Close.*—Filed May 17, 1886.—Colo.

PROMISSORY NOTE.—ADMISSION OF GENUINENESS, BUT DENIAL OF MATURITY.—An admission of the genuineness of a note does not estop the denial of its maturity. A plea traversing the allegation that a note is due and not traversing facts alleged which show its maturity, is bad. Each material allegation in the complaint must be met and denied.—*Watson* v. *Lemen.*—Filed May 18, 1886.—Colo.

PROMISSORY NOTE.—EFFECT OF ATTESTATION.—MATERIAL ALTERATION.—The effect of attesting a promissory note is to enlarge the maker's liability, by prolonging the running of the statute of limitations from six to twenty years. An attestation procured by the payee without the maker's consent, would be a material alteration. An attestation by a stranger not procured by either the payor or payee, and without their knowledge, would not effect the validity of the note.—*Church* v. *Fowle.*—Filed May 8, 1886.—Mass.

PROMISSORY NOTE.—FRAUD.—AFFIDAVIT OF DEFENSE.—QUESTION FOR JURY.—In an action on a promissory note where the defendant filed an affidavit alleging that the note was given for accommodation and that he was subsequently induced by fraudulent representations to buy an interest in a business, a part consideration for which the note was held, it is *held* that on this affidavit of defense it should go to the jury.—*Swarzkopf* v. *Hill.*—Filed April 19, 1886.—Pa.

PROMISSORY NOTE—GIVEN FOR A PATENT RIGHT.—STATUTE REQUIRING THAT THE NATURE OF THE CONSIDERATION BE EXPRESSED IN THE NOTE.—An act requiring that anyone taking a promissory note in payment for a patent right shall cause to be written in the face of the note the words "given for a

patent right" is *held* to be unconstitutional and where a note given without these words being written in the note, it is not necessary for the holder to prove that he took it without notice and for a valuable consideration. *Horstman* v. *Zimmerman.*—Filed May 3, 1886.—Pa.

PROMISSORY NOTE.—JUDGMENT BY DEFAULT.—DEFENSE OFFERED UPON THE ASSESSMENT OF DAMAGES.—In an action upon a promissory note there was a declaration of general *assumpsit*, and no affidavit of defense being filed the plaintiff took judgment by default. The case was continued for assessment of damages and upon the assessment of damages the defendant offered to show a defense, which was not allowed. *Held* no error.—*First Nat. Bank* v. *Darset Marble Co.*—Filed April 12, 1886.—Vt.

PROMISSORY NOTE.—PLEA OF NON EST FACTUM.—EVIDENCE.—In an action on a promissory note which was signed by a surety, and plaintiff proves that defendant never signed more than one note as surety, on a plea of *non est factum* the defendant may show all the circumstances attending the signing of the note in dispute, although the date of the note sued on is different from the one proven to have been signed.—*Reyman* v. *Parker.*—Filed may 21, 1886.—Ind.

PROMISSORY NOTE.—PLEDGED AS COLLATERAL.—PURCHASER FOR VALUE.—Where a promissory note was pledged as collatteral, and the pledgee delivered the note to the pledgor, that he might have it discounted and pay to him the proceeds, and the pledgor wrongfully sells the note to cancel a former indebtedness of his, *held* that if the purchaser knew that the note was pledged he acquired no title to it, and whether he knew the fact or not was a question for the jury. —*Kellogg* v. *Thompson.*—Filed May 20, 1886.—Mass.

PROMISSORY NOTE.—PROTEST.—NOTICE BY MAIL.—In protesting a note it is not necessary for the notary to make inquiry as to any of the endorsers except the last one, or to take any notice of the residence of the maker. It is only necessary that he give notice in accordance with business usages. A letter deposited in a street letter-box is equivalant to depositing it in the post office.—*Wood* v. *Callaghan.*—Filed May 12, 1886.—Mich.

PROMISSORY NOTE.—SUFFICIENT NOTICE OF PROTEST.—MAILING NOTICE.—A notice of protest, mailed to the office where the indorser is in the habit of getting his mail, is sufficient to fix his liability. An endorser's liability is fixed by proper presentment, demand of payment, protest, and notice properly addressed to him. Liability of parties to a negotiable instrument is governed by the law of the place where the note is payable.—*Wooley* v. *Lyon.*—Filed May 15, 1886.—Ill.

PURCHASER AT SALE UNDER A MORTGAGE. —PRIOR JUDGMENT.—WIDOW'S EXEMPTION. —A husband having confessed a judgment, subsequently executed a mortgage on his real estate and subsequently died. After the appointment of an administrator and appraisement being had, the widow elects to take $300 in in the estate subject to the mortgage. The mortgage is foreclosed and the property is purchased by the widow. *Held* that she takes title free from the lien of the prior judgment. *Conrad* v. *S. B. Loan Association.*—Filed May 17, 1886.—Pa.

PURCHASE FOR VALUE.—REIMBURSEMENT. —TRANSFER OF CORPORATE STOCK.—A purchase must be for a valuable consideration passing from one to the other. If no value passes the purchaser can claim reimbursement, subject to antecedent equities. The obtaining of time by an insolvent debtor, in consideration of the sale of corporate stock as collateral, entitles the creditor to no more than the debtor owned or could honestly transfer.—*Linnard's Appeal.*—Filed April 5, 1886.—Pa.

RAILROAD CNMPANY.—RIGHT OF WAY.— ADVERSE POSSESSION.—Where a railway

company took land for right of way, but did not dispossess the owner of the same, after thus holding the land for many years and using the same, *Held* that the right of possession having always remained in the owner, he could not claim title by adverse possession in an action to estop the company from obstructing the right of way.—*Smith* v. *N. Y. & L. E. Ry. Co.*—Filed May 11, 1886.—Mass.

RAILROAD COMPANIES.—FAILURE TO CONSTRUCT BRANCHES IN CHARTER.—FORFEITURE.—The defendant company, by a clause in its charter, forfeited its franchise if it failed to build a certain branch road within eight years. *Held* that the forfeiture applied only to the extent of the branch road not constructed.—*State* v. *St. Paul & S. C. Ry. Co.*—Filed May 26, 1886.—Minn.

RAILWAY COMPANIES.—NEGLIGENCE.—PRESUMPTION ARISING FROM THE ABSENCE OF A FLAGMAN.—In approaching a railway crossing on a highway it is the duty of a person to look and listen for approaching trains, and one failing to do so is guilty of negligence. Where a flag-man is stationed at a crossing, and on approaching the crossing, if one looks for and observes the absence of the flag-man, he is justified in presuming that there is no train approaching.—*Berry* v. *Penn. Ry. Co.*—Filed May 1886. N. J.

RAILROAD COMPANIES.—PAROL GRANT OF RIGHT OF WAY.—REVOCATION.—Where a land owner has granted by parol, the right of way to a railway company, upon condition and upon the company's promise of certain exceptional privileges, and the railway company subsequently refuse to comply with the conditions agreed upon, the land owner may revoke his license of right of way, and the company must resort to condemnation proceedings to obtain it.—*B. & H. Ry. Co.* v. *Alyire.*—Filed May 27, 1886.—Md.

RAILROADS.—PRESUMPTION OF THE ORIGIN OF FIRE CLOSE TO THE TRACK—QUESTION FOR JURY.—Where a fire originates in close proximity to a railway track, the presumption is that it originated from sparks from a locomotive and the burden of proof is on the company to show that it did not so originate. Where combustible material is allowed to remain near a railway track the question of negligence of the company in allowing it to remain there is a question for the jury.—*Gebbons* v. *Wis. Valley Ry. Co.*—Filed May 15, 1886.—Wis.

RAILROAD COMPANY.—RUNNING OF CONSTRUCTION TRAINS.—NEGLIGENCE.—Where a railroad company has contracted for the building of its road and in the work of building, the locomotives and construction trains are run exclusively by and under the control of the contractor, the company is not liable for damages accruing from the negligence of those running the train.—*Hitte, Admr.* v. *Rep. Vatley Ry. Co.*—Filed May 26, 1886.—Neb.

RAILROAD COMPANY.—STATUTORY LIABILITY FOR INJURIES.—NOTICE REQUIRED.—The statute provides that "any person injured in person or property by means of a defective road or bridge may recover damages from the party bound to keep it in repar," but before an action can be maintained written notice must be given of the time, place and circumstances under which the injury occurred. The giving of such notice is a condition precedent to the right to maintain an action.—*Fields* v. *H. & W. H. Ry. Co.*—Filed April 16, 1886.—Conn.

RIGHT OF WAY.—PERSONAL GRANT CONDITIONED UPON OCCUPANCY.—ASSIGNEE.—Where a grant of right of way is made conditioned upon the occupancy and use of the way by the grantee, and the grantee becoming insolvent makes an assignment, the grant is at an end. It being personal does not pass to the assignee—not being appurtenant or incident to an estate in lands.—*Hall* v. *Arwstrong.*—Filed March, 1886.—Conn.

RAILWAY COMPANY.—FAILURE TO FENCE TRACK.—LIABILITY FOR INJURY TO STOCK.—Where a railway track running through a farm is unfenced and a hog belonging to the owner of the farm strays upon the track and is killed, the company is liable. A railroad company is bound to fence its track with a good and lawful fence.—*Mo. Pac. Ry. Co.* v. *Bradshaw.*—Filed May 8, 1886.—Kans.

REAL ESTATE OF WIFE.—ALIENATION.—MORTGAGE.—Where the wife owns real estate in her own name the only limitation on her alienation of the same is the consent of her husband, and when he joins with her in the execution and acknowledgment of a deed the transfer of her estate is perfect. *Held* that a mortgage executed on the wife's property to secure the husband's debt is valid when the husband has joined in the execution of the mortgage.—*Sav. Bank* v. *Underwood.*—Filed Jan., 1886.—Conn.

RELEASE OF MORTGAGE BY MISTAKE.—RIGHT TO CORRECT THE MISTAKE BY PAROL TESTIMONY.—One holding two mortgages on the same property, one of which was made to him, and the other he took by assignment, upon receiving payment of the one originally made to him, by mistake satisfies and cancels the other mortgage on the record. *Held* that he might have the mistake remedied and the record corrected by parol testimony.—*Bond, Adm'r* v. *Dorsey.*—Filed May 27, 1886.—Md.

REPLEVIN.—DEFENDANT NOT IN POSSESSION OF THE PROPERTY.—An action of replevin cannot be maintained against one who is not in possession of the property replevied as he cannot deliver possession unless he has disposed of the property for the purpose of avoiding the writ.—*Gildes* v. *Crosby.*—Filed May 12, 1886.—Mich.

REPLEVIN.—SALE ON EXECUTION.—PLEADING.—A purchaser of a chattel mortgage at sheriff's sale, which is subsequently seized on a writ of attachment issued from a justice's court, who replevies the same, if he relies on his title derived from the sheriff, he must allege the court in which the action was commenced, the claim on which it was brought, the regularity of the judgment, and that the statute was complied with in the issuing of the execution.—*Page* v. *Smith.*—Filed May 3, 1886.—Oregon.

REPORT OF CASE FOR DETERMINATION.—MUST REPORT THE WHOLE CASE AND NOT INTERLOCUTORY FINDINGS ONLY.—The provisions whereby the superior court may report a case to the supreme court for determination does not authorize the reporting of questions of law upon interlocutory findings, but means that the case must be fully tried and ripe for judgment. Where a case was tried and judgment rendered that the penalty was forfeited by defendant, without stating the amount of the penalty. *Held* not properly reported.—*Commonwealth* v. *Teevens.*—Filed May 8, 1886.—Mass.

RIPARIAN RIGHTS.—PRESCRIPTIVE USE.—INJUNCTION.—Where a riparian owner has acquired a prescriptive use of the waters of a stream for irrigation purposes, a lower riparian owner cannot enjoin him from such use of the water on the ground that it diminishes the water below.—*Messenger's Appeal.*—Filed Oct. 5, 1885.—Pa.

RISKS OF EMPLOYMENT.—LIABILITY OF EMPLOYER.—KNOWLEDGE OF DANGER BY EMPLOYE.—A man engaged in sinking a shaft, having charge of the machinery and men employed with him in the work, and having examined the machinery before commencing the work, if injured by reason of a defect in the machinery cannot recover of his employer for the injury.—*Wells* v. *Coe.*—Filed April 29, 1886.—Colo.

SALE.—BREACH OF WARRANTY.—RETENTION OF PROPERTY.—Where property is sold and warranted and the property delivered is not what was contracted for and warranted, if the purchaser retains the property deliv-

ered, the measure of damages is the difference between the contract price and the value of the property delivered.—*W. W. Mfg. Co.* v. *Thompson.*—Filed May 8, 1886.—Kans.

SALE.—TITLE TO PERSONAL PROPERTY.—COLLATTERAL AGREEMENT BETWEEN SELLER AND PURCHASER.—A party, a tanner, agreed to purchase hides for another, and tan them and share in the profits of the sale, the hides at all times to remain the property of the party for whom they were purchased. Hides being thus in process of tanning are seized on execution by creditors of the tanner. *Held* that the legal title to the property is in him and the lien of the levy is valid. The purchaser of the hides is held to have loaned the money for their purchase to the tanner.—*Johnson* v. *Ensign.*—Filed May 17, 1886.—Pa.

SALE.—DIRECTIONS FOR SHIPMENT OF GOODS.—LIABILITY OF VENDOR.—Where one purchases goods of another, and the vendee gives instructions to the vendor as to the shipment of the goods, the vendor must follow the instructions of the vendee, or if not and the goods be lost, he is liable for the loss. If the vendee gives no instructions as to the shipment and the vendor ships in the usual manner, or where previous shipments have been made to the same party in the same manner, the vendor has discharged his duty and the goods are at the risk of the vendee after they are delivered to the carrier.—*Wheelhouse* v. *Parr.*—Filed May 8, 1886.—Mass.

SALE.—DELIVERY OF ORE OF CERTAIN QUALITY.—CONDITIONS OF CONTRACT.—A party agreed to work certain ore mines and deliver a certain quantity of a certain grade per month, and failing to perform this contract the owner might take possession of mine upon 30 days notice. A disagreement arose as to the quality of the ore and the lessee stopped delivery and the lessor gave notice that he would take possession of the mine. In an action upon bill the court found that the ore had not been properly tested and graded and that the lessor had not paid for the ore as per contract and it is *held* that as defendant's conduct did not evince any intention to abandon the contract and the stoppage in delivery was not justifiable, and that the lessor was entitled to take possession of the mine.—*Trotter* v. *Hecksher.*—Filed Jan., 1886.—Pa.

SALE OF A HORSE.—WARRANTY.—ACTION FOR BREACH.—In an action for breach of warranty, in the sale of a horse, the plaintiff cannot be questioned as to his transactions in purchasing other horses. Although he may be a dealer in horses, he may not be or claim to be an expert. Unless a purchaser claims to be an expert in knowledge of qualities and defects of a horse such questions are not admissible.—*Russell* v. *Cruttenden.*—Filed Dec. 1885.—Conn.

SAVINGS BANKS.—FRAUDULENT TRANSFER.—ACTION AGAINST THE MANAGERS.—Where the funds of a bank have been wrongfully transferred to third parties and a receiver has been appointed, in an action by the receiver against the managers for recovery of the moneys, it is not necessary to join the parties to whom the funds were transferred.—*Wilkinson, Rec'r* v. *Dodd.*—Filed Sept. 23, 1885.—N J.

SERVICE OF PROCESS.—POWER OF APPOINTMENT OF DEPUTY CONSTABLE.—A constable may appoint a deputy to act in his stead if he is sick or absent, but cannot appoint a deputy to act permanently. Service of process by a deputy is not good unless the record shows that he was acting under a regular appointment for the purpose.—*Prickett* v. *Cleek.*—Filed May 10, 1886.—Oregon.

SETTLEMENT.—LIQUIDATED CLAIM.—REMEDY TO RECOVER THE AMOUNT.—Where two parties agree upon a settlement of an existing account between them, and a fixed amount is agreed upon, it becomes an account stated and in an action to recover the

amount the action must be founded on the agreement thus made.—*Hanley* v. *Noyes.*—Filed May 10, 1886.—Minn.

SALE OF PERSONAL PROPERTY FOR CASH.—TITLE DOES NOT PASS UNTIL PROPERTY IS PAID FOR.—Where a party purchased some live stock, paying part cash when the agreement was made and to pay the balance when the stock was delivered at a certain place, and upon delivery the purchaser tendered the seller his own notes, made to the order of a third party, which were refused. *Held* that he was not bound to receive the notes and the title to the stock remained in the seller until the stock was paid for.—*Bush* v. *Bender.*—Filed May 31, 1886.—Pa.

SETTLEMENT OF A PAUPER.—POOR AND POOR LAW.—DOMICILE OF A DAUGHTER IS WITH HER FATAER.—Where a daughter has been absent from the home of her father for eight years, yet her settlement under the poor law is the same as that of her father. The purchase of a house by a pauper's wife may give him an estate as tenant by curtesy initiate, but does not give him a settlement without a year's residence.—*Montoursville Bourough* v. *Fairfield Tw'p*——Filed March 29, 1886.—Pa.

STATUTE OF LIMITATIONS.—ADVERSE POSSESSION.—TACKING OF POSSESSION.—One, in claiming title by adverse possession cannot avail himself of the previous possession of another. Where a tenant has improved land, in order to sustain a claim for the improvements, he must show that he had actual peaceable possession, and supposed he had a good title and held in good faith.—*Locke* v. *Whitney.*—Filed March 11, 1886.—N. H.

STATUTE OF LIMITATIONS.—ADVERSE POSSESSION.—DECLARATIONS OF PARTY IN POSSESSION.—The fact of adverse possession is generally shown by the facts in the case and not by the declarations of the party in possession, unless such declaration may be regarded as part of the *res gestæ.* The absence of any declaration by the party in possession cannot be shown as against him. —*Seymour* v. *Over River School Dist.*—Filed Oct., 1885.—Conn.

STATUTE OF LIMITATIONS.—FORECLOSURE OF MORTGAGE.—WHEN THE STATUTE BEGINS TO RUN.—The statute provides that "no action for the recovery of real estate shall be brought after twenty years from the time the right to recover first accrued." This refers to the right to recover as owner. In the case of a mortgagee the statute does not begin to run until the right of foreclosure accrues. Until then he has only a right of possession.——*Clough* v. *Rowe.*——Filed March 12, 1886.—N. H.

STATUTE OF LIMITATIONS.—PLEA OF SET-OFF.—DATE OF FILING PLEA.—Where a set-off is pleaded, any item in the account claimed as a set-off, extending beyond the six years from the date of filing the plea, will be barred by statute. Mutual accounts where any one of the items are within the limit, will take the whole case out of the statute of limitations.—*Seitzinger Ex'r* v. *Alspach.*—Filed May 3, 1886.—Pa.

TAXATION.—CONSTITUTIONALITY OF ACT.—FAILURE OF A CITIZEN TO MAKE RETURN.—PENALTY.—The act of June 7, 1879 and of June 30, 1885 must be read and construed together and are held constitutional. The provision by which the assessment of one who fails to make return of his property, is increased by 50 per cent. is not in violation of the constitution. The increase is in the nature of a penalty.—*Fox's Appeal.* —Filed May 10, 1886.—Pa.

TAX SALE.—EVIDENCE OF ASSESSMENT.—JOINT TAX OF REAL AND PERSONAL PROPERTY.—In order to establish a tax title the purchaser must show that the tax was properly assessed, and that it has not been paid and that there was not sufficient personal property on the premises out of which the tax could be made. The proper evidence

is the duplicates in the commissioner's office. Where the duplicates show that the assessment was made jointly on personal and real property it will be excluded.—*Stark* v. *Shupp*.—Filed April 12, 1886.—Pa.

TAXATION.—COUNTY POOR-HOUSE.–ROAD TAXES.—The county poor house erected in Cumru township, Berks county, is not subject to taxation for road purposes. The act of 1874 did not repeal the act of 1848 relating thereto. This property belongs to the municipality created by act of 1824 and its jurisdiction is co-extensive with the county in pauper cases.—*Twp. of Cumru* v. *Berks County*.—Filed March 19, 1886.—Pa.

TAXATION.—MISTAKE IN THE NAME OF OWNER.—VALIDITY OF ASSESSMENT.—A mistake in the name of the owner of property by the assessor will not render the assessment invalid, if made since the enactment of the amended code in 1880. Prior to that time such a mistake would have voided the assessment.—*Pearson* v. *Creed*.—Filed May 20, 1886.—Cal.

TAX LIEN.—SALE UNDER CHATTEL MORTGAGE.—A sale of property under a mortgage divests the lien of the mortgage and also of those taxes assessed within a year, and it makes no difference if there was other personal property out of which the tax might have been collected.—*Appeal of Anspach*.—Filed March 1, 1886.—Pa.

TOWNSHIP BRIDGES.—LIABILITY IN CONSTRUCTION.—A township in constructing its bridges is not bound to anticipate any extraordinary use of its bridges, by driving fast over them or by driving more than ordinarily heavy loads over them. They should be constructed with regard to the reasonable and ordinary use for which they are built.—*McCormich* v. *Washington Twp*.—Filed March 8, 1889.—Pa.

TELEPHONE COMPANIES.—PUBLIC POLICY.—PATENT RIGHTS.—Where a telegraph company contracted wilh a telephone company that certain differences should be settled on the ground that the telephone company should not use certain patent rights in competition with the telegraph company, it is *held* that in so far as the contract prohibited the latter from competing with the former it was void, as being against public policy.—*Bell Telephone Co.* v. *B. & O. Telegraph Co.*—Filed April 19, 1886.—Pa.

TRESPASS.—APPROPRIATION OF LAND BY A CORPORATION BY RIGHT OF EMINENT DOMAIN.—ENTRY BEFORE PAYMENT.—A corporation must pay the damages assessed before entering upon land taken for its use or be liable to an action for trespass. The right of action accrues upon entry and the subsequent giving of a bond as required by statute does not bar an action. This right of action may be waived, and if the owner submits the matter to a jury, that submission is final.—*B. S. Gas & Water Co.* v. *Yoder*.—Filed March 29, 1886.—Pa.

TREASURER'S DUTIES.—MINISTERIAL.—PAYMENT OF WARRANT PROPERLY DRAWN.—When an order on the treasurer of a municipal corporation is properly drawn, by the comptroller, it is the duty of the treasurer to pay it upon presentation, if he has funds applicable to the purpose. His office is simply ministerial and upon his refusal to pay *mandamus* is the proper remedy of the holder of the order.—*Robb, Register* v. *Carter*.—Filed May 27, 1886.—Md.

TRIAL.—VALIDITY OF VERDICT.—POSSESSION UNDER THE HOMESTEAD LAWS.—In a trial against two persons jointly a verdict for plaintiff was rendered, and in the verdict the full names of both defendants were written, but the name of one of the defendants was erased by drawing a line through it. *Held* that the intention of the jury clearly appeared to be that the verdict was against the one whose name was not erased. In an action of trespass by a settler upon public lands

under the homestead laws the question whether he has acquired that possession which enables him to maintain trespass is a question for the jury.—*French* v. *Creswell.* —Filed May 17, 1886.—Oregon.

TROVER AND CONVERSION.—AN AGENT NOT LIABLE FOR CONVERSION PERSONALLY. —An agent who acts by direction of his principal, and has no knowledge that he is acting wrongfully in appropriating the goods of another, is not personally liable for a wrongful conversion of the property.—*Lenthold* v. *Fairchild.*—Filed May 4, 1886.—Minn.

TRUST.—APPOINTMENT OF TRUSTEE.—JURISDICTION OF COUNTY COURT.—The county court of Cook county has no jurisdiction to appoint a trustee, and any appointment made by that court is void. Trustees or their successors must be appointed by court of chancery, and the county court has no chancery jurisdiction.—*Leman* v. *Sherman.*—Filed May 15, 1886.—Ill.

TRUST DEED.—MADE IN CONTEMPLATION OF MARRIAGE.—REVOCATION.—A woman, in contemplation of immediate marriage, conveyed by trust deed $10,000 in cash to be held for her use, without any power of revocation. Upon the subsequent death of her husband she desires to revoke the deed of trust. *Held* that as the manifest intention of the deed was to place the money beyond the control of her husband, she becoming discovert, was entitled to the cancellation of the deed.—*McFarland's Appeal.* —Filed Feb. 23, 1886.—Pa.

UNITED STATES COMMISSIONER.—JURISDICTION IN HABEAS CORPUS.—ATTORNEY.—Where a person has been convicted of a felony in a state court, a United States commissioner has no right to issue a writ of *habeas corpus*, and discharge the prisoner, and an attorney thus obtaining a writ cannot be heard to allege his good faith in justification of his action.—*State* v. *Barr.*—Filed May 26, 1886.—Neb.

VENDOR AND VENDEE.—OPINION OF COUNSEL AS TO TITLE.—ADMISSIBILITY OF IN EVIDENCE.—Where land is sold and the vendee tenders a deed and demands the purchase money, which is refused, in a subsequent action to recover the purchase money the opinion of the counsel as to the validity of the title to the land cannot be offered in evidence. Where a grantor has covenanted to convey by a good merchantable title, and there is an outstanding title in trustees, payment of the purchase money cannot be enforced, until the outstanding title is extinguished.—*Murray* v. *Ellis.*—Filed April 19, 1886.—Pa.

VENDOR AND VENDEE.—SALE BY ONE TENANT IN COMMON RESERVING ALL THE TIMBER.—Where one tenant in common sold the one undivided half of a tract of land, reserving to himself all the timber, as part of the purchase price, the reservation extends only to one undivided half sold. It is not in the power of the court to strike off the conditional part of a verdict and make it absolute.—*Eberts* v. *Thompson.*—Filed May 24, 1886.—Pa.

VENDOR AND VENDEE.—SPECIFIC PERFORMANCE OF CONTRACT.—DEFECT OF TITLE.—Where one purchases land and subsequently discovers that there is a defect in the title, he cannot be compelled to accept a doubtful title. Where one purchased a tract of land and subsequently found that a street had been laid out upon the same which was not yet opened, it is *held* that he could not be compelled to accept the title. —*Appeal of People's Savings Bank.*—Filed April 19, 1886.—Pa.

VENDOR AND VENDEE.—TITLE DOUBTFUL. —JURISDICTION OF THE ORPHAN'S COURT.—Where a contract for the sale of lands has been made and there appears some uncertainty as to the title, or a possibility of litigation in order to establish the title, a court of equity will not enforce the contract. An *ex parte* decision by the orphan's court

where the intestacy of decedent is in issue may be set aside. Such decision is only *prima facie* evidence of the facts recited therein.—*Emmett* v. *Stauffor.*—Filed March 9, 1886.—Md.

WAGERS.—HORSE-RACE.—NOTICE TO STAKE-HOLDER NOT TO PAY OVER.—A wager upon a horse-race is a gaming contract and utterly void. Money bet on a horse-race may be revoked by either party before it is paid over by the stake-holder. After notice, the stake-holder holds the money subject to the order of the depositor.—*Corson* v. *Neatheny.*—Filed May 17, 1886.—Colo.

WATERS AND WATER-COURSES.—DIVERSION OF WATER.—Where the back-water from a mill-dam extended upon the land of a railway company and the company drew water therefrom to supply their engines, to the extent that it interfered with the necessary supply of the mill. *Held* that the company could not use the water to the injury of the mill owner unless it took possession by right of eminent domain.—*Penn. Ry. Co.* v. *Miller.*—Filed April 19, 1886.—Pa.

WATERS AND WATER-COURSES.—RIGHTS OF MILL OWNERS.—ALL INTERESTED IN DRAWING WATER FROM A COMMON DAM.—Where three mills were situate on the same stream, one above another, and each having certain rights in a great dam from which all drew water, the owner of the middle mill repaired the great dam at his own expense and brought an action at law against the owner of the lower mill for contribution of his part of the expense. *Held* that the remedy was by bill in equity and not at law. The rights of the several mill owners were controlled by the by-laws of a company owning the great dam.—*Lamson* v. *Worcester.*—Filed May 26, 1886.—Vt.

WATERS AND WATER COURSES.—RIGHTS OF PROPRIETORS USING WATER POWER.—Where two mills are located, one higher up a stream than the other, and the owner of the upper mill constructs a large reservoir whereby he is enabled to use the water to better advantage than the owner of the lower mill, the latter has no just ground of complaint or right of action against the former for thus controlling the water. If the latter owner would construct an equally large reservoir he would suffer no damage.—*Kirch* v. *Sandersou.*—Filed May 15, 1886.—Wis.

WATER PRIVILEGES.—WATER COMPANY.—RIGHT TO CHANGE RATES.—A gas and water company, having granted to the borough the right to use water without charge, reserving the right to change its rates in the future, after a period of 30 years free use of water by the borough, the company change their rates and charge for the use of the water. *Held* that the town could not refuse to pay because it had notice of the reserved right to change by the company.—*Carlisle* v. *Carlisle G. & W. Co.*—Filed May 17, 1886.—Pa.

WAYS.—BREADTH OF ROADS.—PETITION FOR REVIEW.—A petitition for review under the road law, must be presented at the next term of court after the confirmation of viewer's report. Where the court approves the report of viewers it must direct of what breath the road shall be. If this is not done the parties in interest will not know whether to accept or not.—*In Re Road Lackawana Sownship.*—Filed March 15, 1886.—Pa.

WAYS.—EMINENT DOMAIN.—DEDICATION OF LAND.—Land may be dedicated for a public highway, with reservation of a portion thereof for use of a railway company, and when such portion has been devoted to the use of the railway company the public use is suspended and so continues as long as used by the railway company.—*Ayers* v. *Penn. Ry. Co.*—Filed May 15, 1886.—N. J.

WAYS—LOCATION OF.—TIME OF FILING ARPEAL.—In the location of highways where an appeal is taken the appellant on damages may file notice of the appeal within 60 days after final judgment in favor of such high-

way. The requirements of Chap. 18, Section 5 are applicable only when no appeal on location has been taken.—*B. & M. Ry. Co.* v. *York Co.*—Filed March 15, 1886.–Me.

WAYS.—OBSTRUCTION OF.—SPECIAL INJURY.—For the obstruction of a public highway an individual cannot maintain an action unless he has sustained a special injury. The fact that plaintiff's route to market is interfered with by obstructions is not such special injury as entitles him to maintain an action therefor.—*Sohn* v. *Cambern.* —Filed May 12, 1886.—Ind.

WILL.—BEQUEST FOR LIFE WITH REMAINDER OVER.—INCOME IN CERTAIN BUSINESS TO BE PAID TO THE WIDOW.—Where a decedent bequeathed the income from a certain business, which he directed to be continued, to be paid to his wife for her support, and at her death upon certain conditions his interest in the business he directed to be sold, and the proceeds divided among his children. *Held* that the widow had only a life estate in the money paid to her during her life.—*Proctor* v. *Proctor.*—Filed Feb. 24, 1886.—Mass.

WILL.—BILL IN EQUITY.—JURISDICTION OF THE COURT OF COMMON PLEAS.—The orphan's court has exclusive jurisdiction to ascertain the amount of estates of decedents, and to order distribution thereof, but the court of common pleas may make a decree establishing rights under a will if such decree be in accord with the provisions of the will—*Hall's Appeal.*—Filed April 19, 1886.—Pa.

WILL.—CHOSES IN ACTION.—CONSTRUCTION.—Where a testator bequeathed to his son "all my personal property in the city of Philadelphia, excepting securities of every kind, and building association stock," his interest in a partnership firm in Philadelphia did not pass under the bequest. *Held* that the intention of the testator was not to include any choses in action.—*Sloan's Appeal.* —Filed Feb. 23, 1886—Pa.

WILLS.—CONSTRUCTION OF.—LIFE ESTATE.—Where a will contained these words, "Giving her (testator's wife) full power and authority to sell the whole or any part of my said real estate, and execute deeds therefor; and in case any of my estate be left after the death of my said wife, I order it to be divided as follows, etc." *Held* that the widow took only a life estate in the property.—*Brockley's Appeal.*—Filed May 31, 1886.—Pa.

WILL.—DOWER.—ELECTION TO TAKE UNDER THE WILL OR DOWER.—The statute provides that when a man dies siezed of lands in fee, leaving a widow but no issue, the widow, in lieu of dower, is entitled to one-half of her husband's estate for life. It is also provided that where a man dies testate, the wtdow may elect to take under the will or to rely upon her statutory rights as though he had died intestate. Where a husband died testate and the widow filed her disclaimer under the will and notice that *she claimed dower*, and subsequently claimed under the statute one-half of her husband's estate. *Held* that having filed her claim of dower she could not subsequently amend her claim and rely upon statutory rights.—*Matthews* v. *Matthews.*—Filed May 7, 1886.—Mass.

WILL.—LIFE ESTATE WITH POWER TO SELL.—REMAINDER.—In a will the following clause occurred: "After my lawful debts are paid and discharged, I give, bequeath, and dispose of as follows, towit: To my beloved wife, Margaret Jones, all that is in my possession at the time of my decease, and also my wife have right to sell the estate, if that will be her choice. And after my wife's decease, the property to be parted to my dear children in equal shares." *Held* that this vested only a life estate in the widow with remainder in fee in the children. —*In Re Will of Jones* v. *Jones.*—Filed May 15, 1886.—Wis.

WILL.—LIFE ESTATE.—BEQUEST OVER.—Where, in a will, there is a bequest to one

person, and in case of his death to another, the gift over is conditioned to take effect only in the event of the death of the prior legatee before the period of payment or distribution, unless a contrary intention appears.—*Post* v. *Van Houten Bx'rs.*—Filed March 9, 1886.—N. J.

WILL.—SALE OF LAND UNDER POWER.—MONEY TREATED AS LAND.—Where a testator directs that his executor sell his lands and pay certain liens and debts, when sold and the debts paid, the surplus, if any, must be treated as real estate. The orphan's court has full power to control the advertisements by the executor in the sale of lands.—*Parker* v. *Allen, Adm'r.*—Filed May 24, 1886.—N. J.

WILL.—SUSPENSION DURING TWO LIVES IN BEING.—A trust which is not terminable with or within any two lives in being is in violation of statute and void. Where property is thus bequeathed in trust, which is not terminable within any two ascertained lives, the will is void and the estate shall be treated as if the testator had died intestate.—*Rice* v. *Barrctt.*—Filed April 13, 1886.—N. Y.

WILLS.—UNCERTAINTY AS TO DEVISES.—EFFECT OF CODICIL.—Where a will gives the whole of the testator's estate to one for life, and a codicil is added giving legacies to others, the codicil modifies the will and the latter legacies are payable unaffected by the life estate. A bequest "for the special benefit of the worthy, deserving poor * * widow's and orphans residing in Bridgeport, Connecticut," is held good and valid.—*Beardsley's Ex'rs* v. *Bridgeport.*—Filed February 13, 1886.—Conn.

WITNESS.—INSTRUCTIONS AS TO CREDIBILITY.—Where the testimony of plaintiff and defendant were in direct conflict, the court charged the jury that "if the jury found that plaintiff had willfully misrepresented in any material particular, they could not only disregard his evidenbe, but it must throw suspicion on his whole case." *Held* that there was no error in this charge.—*Sharp* v. *City of Erie.*—Filed May 17, 1886.—Pa.

WRIT AND PROCESS.—DISMISSAL FOR WANT OF PROSECUTION.—Actions are commenced by filing complaint and issuing summons. The summons may be issued within one year after the filing of the complaint. If the summons be issued within one year and service had within a reasonable time, although the year expired before the service the action will not on that account be dismissed.—*Cowell* v. *Stuart.*—Filed May 17, 1886.—Cal.

Conlyn v. *Parker.*

Filed May 17, 1886.—Pa.

(A *scire facias* being issued to revive a judgment entered on a bond given by a married woman, she canot plead her coverture unless the record of the original judgment showed her coverture.)

Riegal v. *Denhard.*

Filed Mrrch 15, 1886.—Pa.

(When all the kindred of an intestate are incompetent to take the administration of his estate by reason of minority, and another is appointed, upon their arriving at full age, the letters granted to another are terminated.)

Gross v. *Drager.*

Filed May 15, 1886. Wis.

(In an action based upon an order for a machine signed by one who did not understand English, it is competent to show by parol evidence that the signer relied entirely on what the seller told him and did not understand the purport of the written order.)

Seofield v. *Blackmar.*

Filed Moy 24, 1886.—Pa.

(One sold a lot of oil for future delivery. On the day agreed upon he tendered the purchaser a certificate in proper form for the oil which was refused. He then sold the oil at the market price, which was below the price he had sold it for. *Held* that he might recover the difference of the defaulting purchaser.)

Bently Ex'rs v. *Lamb.*
Filed April 26, 1886.—Pa.

(A moral obligation to perform a promise is sufficient consideration to support an express promise.)

Biery v. *App.*
Filed March 8, 1886.—Pa.

(A bond dated while the stamp act was in force but signed after repeal of the act, is not void for want of a stamp.)

McIntire v. *Wing.*
Filed May 24, 1886.—Pa.

(While an appearance by counsel may lead to verdict and judgment in an ejectment suit, yet it is absolutely necessary to prove possession.)

Ensingn v. *Haffield.*
Filed May 17, 1886.—Pa.

(Goods obtained by fraud may be replevied by the seller, as against an attaching creditor of the purchaser.)

Maher's Appeal.
Filed April 12, 1886.—Pa.

(An omission to make a proper defense to an action on a promissory note cannot be remedied by a bill in equity subsequently filed.)

Dealey v. *P. & R. Ry. Co.*
Filed April 12, 1886.—Pa.

(Where a collision of trains occurred by reason of the negligence of a station agent and the engineer was killed, *held* that his representatives could not recover because the station agent and engineer were co-employes.)

O'Brien v. *Cavanaugh.*
Filed May 6, 1886.

(In the absence of evidence that the owner of premises has no right to the possession of the same, he may maintain an of trespass on said property.)

Tremayne v. *Roberts.*
Filed April 29, 1886.—Mich.

(Where a trial is had to a jury before a justice and the jury disagree, and are discharged, and the justice adjourns the case to a certain time, the failure of the defendant to appear at the time fixed, judgment taken against him by default is final.)

E. & B. Association v. *State.*
Filed May 7, 1886.—Kans.

(Where an association contracts to pay a certain sum within a certain time as an endowment, or upon the death of an individual to pay a certain sum to a party named, this constitutes a contract of life insurance.)

Doty v. *Dexter.*
Filed May 6, 1886.—Mich.

(An administrator of a decedent who had obtained judgment in a justices court cannot have execution on such judgment in another county without first commencing suit in the county and obtaining judgment there.)

Beckwith v. *Beckwith*
Filed May 6, 1886.—Mich.

(A widow's dower is subject to contracts entered into by the husband before marriage.)

Carpenter v. *Rogers.*
Filed May 12, 1886.—Mich.

(A contract made and entered into by one when he is intoxicated is not absolutely void, but voidable only.)

Pearle v. *Garlock.*
Filed May 12, 1886.—Mich.

(A defendant in replevin cannot recover on a replevin bond any more than his legal damage.)

Myron v. *Mich Cen. Ry. Co.*
Filed May 12, 1886.—Mich.

(Where a witness testifies that an injury was caused by a defective fence and subsequently that it was a defective cattle-guard, the variance may go to the credibility of the witness.)

Wells v. *Wilcox.*
Filed April 23, 1886.—Iowa.

(The description of property in a chattel mortgage is sufficient if it will lead to the identification of the property with certainty.)

Miller v. *Buena Vista Co.*
Filed April 23, 1886.—Iowa.

(A county is not liable for an attorney's fee although he was appointed, by the judge in the absence of the district attorney, to appear in a *habeas corpus* case.)

Sterner v. *Wilson.*
Filed April 23, 1886.—Iowa.

(The amount in controversy, on an appeal from a justice's court, must be determined by the pleadings and not by evidence upon the trial.)

Marker v. *Dunn.*
Filed April 23, 1886.—Iowa.

(Errors assigned, but not urged by counsel, will not be considered. The court will not assume the duty of counsel in searching for reasons in support of any given proposition.)

Hahn v. *Miller.*
Filed April 23, 1886.—Iowa.

(An embankment where water flowed back on plaintiff's land was adjudged not to be a nuisance and, being somewhat extended, another action was brought for the same cause. *Held* that the former action was a bar. In any case where the same evidence will sustain the latter, as was adduced in the former action, the judgment in the former is a bar in the latter action.)

Patterson v. *Mills.*
Filed April 23, 1886.—Iowa.

(When the holder of a legal title acquires a mortgage on the same property, the mortgage will not merge in the title otherwise acquired unless the holder intends it shall so merge.)

Henderson v. *City of Detroit.*
Filed May 6, 1886.—Mich.

(An action against the city for a trespass committed by the Detroit Fire Commission, a separate corporation, cannot be maintained.)

McCoy v. *Brennan.*
Filed May 6, 1886.—Mich.

(Each member of a partnership firm may claim the statutory exemption from execution. A woman, who is a member of a firm, not residing where the firm does business, is not thereby estopped from claiming her exemption under the statute.)

Peters v. *State.*
Filed May 15, 1886.—Wis.

(In an action for the use of obscene language it is necessary to set out the precise words used and in whose presence they were spoken.)

Radell v. *Scharlan.*
Filed May 15, 1886.—Wis.

(A harvester being sold subject to approval upon being tested, the twine furnished with it is a part of the machine, and necessary to the test or trial.)

Rudderow v. *Rudderow.*
Filed May 7, 1886.—N. J.

(The court of chancery cannot refuse to inquire into a charge of fraud against a counsel in case where the fraud might extend to an interested party.)

Wentz, Adm'r v. *Lowe.*
Filed May 10, 1886.—Pa.

(Where a party deals with a corporation selling it building material, and such material is delivered in the name of one of the officers of the corporation, and the officer makes a note in payment for the same, in an action on the note the corporation cannot deny its corporate existence.)

White Sewing Machine Co. v. *Hines.*
Filed May 12, 1886.—Mich.

(Where one signs the bond of an individual and that individual subsequently becomes a member of a firm, the surety is not liable on the bond for any act of the firm.)

Shepard v. *Taylor.*
Filed Dec. 30, 1885.—R. I.

(Where a legal estate in realty and an equitable estate unite in the same holder, the course of the legal estate determines whether the holder has an ancestral estate or not.)

Hoyt v. *Hoyt.*

Filed March 10, 1886.—Vt.

(The incompetency of a plaintiff in a bill in equity must be taken advantage of by plea and not in answer. If the incompetency appears in the face of the bill, a demurrer may be successfully interposed.)

Crampton v. *Perkins.*

Filed March 10, 1886.—Md.

(A note purchased for a valuable consideration is good in the hands of a third party although there may have been fraud in procuring it, unless the holder had knowledge of the fraud before purchasing it.)

Demthorne v. *Hook.*

Filed April 12, 1886.—Pa.

(A creditor cannot charge a silent partner, unless he shows that he gave credit on on the faith of such partner. A contract to build a reservoir by several parties is not a partnership *enter se.*)

Harris' Appeal.

Filed April 5, 1886.—Pa.

(The payments made by a borrowing member of a building association, upon his stock, from month to month, will not be applied in liquidation of his mortgege unless by express agreement.)

Appeal of Barker.

Filed Jan. 1, 1886.—Pa.

(Where a testator directs that his estate shall be divided equally among his children *surviving*, the word surviving refers to the death of the testator.)

Rose v. *Keystone Shoe Co.*

Filed April 12, 1886.—Pa.

(Where a firm in failing circumstances confessed judgment to various friends under which the firm's property was sold and purchased by the plaintiff's in the judgments, and these plaintiff's organize a company and continue the business and employ the former owners as clerks, in an action by creditors to set aside the sale on the ground of fraud, *held* that the question of good faith was a question for the jury, and they having found for defendants it was conclusive.)

Jackson v. *Beach.*

Filed Jan. 2, 1886.—N. J.

(In an action for partition where waste has been committed by a tenant in comuon he may be charged therewith and that portion of the land on which he has committed waste may be allotted to him.)

Elston, Ex'r v. *Carpenter.*

Filed Oct. 13, 1885.—N. J.

(Where the mortgagee of a chattel mortgage has his claim also secured by a bond, he may release the mortgage and hold the securities on the bond.)

Gulick v. *Gulick.*

Filed Nov. 18, 1885.—N. J.

(After a declaration of trust, solemnly established, a judgment cannot be enforced against the trust fund unless the *cestui que trust* be made a party to the suit.)

Combs v. *Combs.*

Filed Sept. 26, 1885.—N. J.

(Where all the usual and proper allegations are set out in an answer and the defendant proceeds to give details which are not within the rule of good pleading, such statements may, upon motion of plaintiff, be struck out.)

Dunn v. *Stokern.*

Filed Oct. 6, 1885.—N. J.

(An order payable out of the amount due on a builder's contract covers extra work done, and is not affected by proceedings to enforce a mechanics lien after the order is presented.)

Glenn v. *Howard.*

Filed March 10, 1886.—Md.

(Where a subscriber to corporate stock, which is subject to calls or assessments *in futuro*, takes advantage of the bankrupt act, his discharge in bankruptcy is no defense to calls or assessments made after his petition in bankruptcy.)

NEW PUBLICATIONS.

A TREATISE on contracts for future delivery and commercial wagers including "Options," "Futures," and "Short Sales,' by T. Henry Dewey, Esq., of the New York Bar: NEW YORK; BAKER, VOORHIS & CO.

This book is on a new subject and one of more than ordinary interest to the profession. Scarcely a city of any pretensions in the United States but has its Board of Trade, or Oil or Stock Exchange on which a greater or less volume of trade is transacted from day to day, and a large part of that trading is done in what is termed "Options" or "Futures." Legitimate and gambling contracts are here so closely allied that it is extremely difficult at times to determine which are legitimate and which are otherwise. Gambling contracts being in violation of the statutes, and therefore void, in most, if not all the states, a treatise which materially aids the practitioner in drawing the line of demarkation between the legitimate and illegitimate contracts is one of more than ordinary value and usefulness. Such a book is the subject of this notice. The subject is treated under the following heads or chapters: Wagers defined; Wagers between principals; Facts and Circumstances which have been considered by the courts as indicating an intention to wager; Evidence; Wagers considered with reference to brokers and commission merchants. The subject reduced to rules.

Mr. Dewey gives a succinct history of legislation on the subject by the different states and cites numerous cases showing the trend of the law on this subject. The whole book is a very clear analysis of the rights and liabilities of the parties to such contracts. The book will be found very valuable, not only to lawyers, but also to brokers, commission men and merchants in every state.

A PRACTICAL TREATISE on the construction or interpretation of COMMERCIAL AND TRADE CONTRACTS, by Dwight Arven Jones, Esq., of the New York Bar. NEW YORK: BAKER, VOORHIS & CO.

There are numerous good and standard books heretofore published on the subject of contracts and it would be a task impossible for any writer, to construct a work entirely new on this subject, yet the writer of this book, limiting his work to *Commercial and Trade Contracts*, has evolved so much that is new on this particular branch of the subject, embracing the latest and the best thought of the highest judicial authority, that *it may justly be regarded as a new work on a new subject.* In reading those chapters wherein he treats of the application of parol evidence, in aid of the interpretation of contracts, the reader will fancy he has heretofore been reading by gaslight, and suddenly the bright electric light illumines the pages. Two chapters are devoted to the subject of trade usages, in which the circumstances are clearly defined, wherein such customs or usages may properly be shown in aid of interpretation. The respective offices of *Judge* and *Jury* in interpretation, the rules for construction of *warranties* and *guarantees* are clearly defined. The principles governing material and immaterial alterations, and the authority to fill blanks in in negotiable paper, are discussed at length. The scope of the work embraces 23 chapters as follows: Nature and scope of construction, Who construes, What law governs, Special cases, The admissibility and effect of parol evidence in aid, Where parol may explain words, Showing surrounding circumstances, When usage may be shown, What is valid trade usage, Admission of supplementary parol, Collateral parol contracts, Conditional contracts, Contradictory parol, Limits of parol evidence, Rules of construction, Rules for construction of insurance policies, Of guaranties, Of material and immaterial alterations, Presumptions as to alterations, Alterations by a stranger and by consent. Not the least valuable characteristic of the work is an elaborate and well arranged index covering 54 pages. The treatise will be found a very valuable and useful one and we predict for it a hearty welcome by the profession. The mechanical execution of the book and the binding reflect credit on the well known house that publishes it.

The Chicago Law Journal.

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ACTION.—CHANGE OF VENUE UPON THE FORMATION OF A NEW COUNTY.—The statute provides that, where a new county is formed, suits pending between parties residing in the new county may be transferred to that county by consent of the parties. Where a suit has been thus transferred the appearance of the party in the latter court waives any objection to the transfer.—*Salomon* v. *Norton.*—Filed Jan. Term, 1886.—Colo.

ACTION.—TRILATTERAL CONTROVERSY.—PARTY MAY CHOOSE THE BEST PROCEDURE AVAILABLE.—A plaintiff is entitled to choose the best constitutional method for establishing his rights. In an action at law an maendment may be allowed, joining a third party defendant, upon proper notice, and a trilatteral controversy may be determined in one suit.—*Owen* v. *Weston.*—Filed March 12, 1886.—N. H.

AGREEMENT IN WRITING.—PAROL EVIDENCE IN AID OF INTERPRETATION.—CORRECTING A MISTAKE.—Where an agreement is written to a man and his heirs it cuts out all assigns, and where the attention of the parties is called to the fact just before signing, and it is the clearly expressed intention that the agreement shall be so written, and by mistake the clause is omittad, that fact may be shown by parol and the intention of the parties will prevail.—*Hyndman* v. *Hogsett.*—Filed March 1, 1886.—Pa.

APPEAL.—LEAVE TO ANSWER AFTER JUDGMENT BY DEFAULT.—DISCRETION OF COURT.—An application for leave to answer after judgment is taken by default is addressed largely to the discretion of the court, and the appellate court will not interfere with the ruling in the case unless there is shown to have been a palpable abuse of the discretion. An affidavit on which such application is based may be made by the attorney, if he has personal knowledge of the facts.—*Frankoviz* v. *Ireland et. al.*—Filed May 28, 1886.—Minn.

APPEAL.—PROBATE OF WILL.—DECREE SILENT AS TO COSTS.—In an appeal from a decree allowing the probate of a will, the allowance of costs is in the discretion of the court. If the final decree be silent as to costs it bars recovery as effectually as if it affirmatively declared their disallowance.—*Blood* v. *Stone, Adm'r.*—Filed June 14, 1886.—Me.

APPEAL.—LIMITATIONS AS TO AMOUNT.—PLEADINGS.—The right of appeal to the superior court of New Haven county, depends solely upon the statement of the amount as it appears in the complaint. All other evidence of the amount is excluded.—*Burke* v. *Grace.*—Filed Dec. 7, 1885.—Conn.

APPEAL.—FILING OF UNDERTAKING.—MUST BE FILED AFTER, AND NOT BEFORE NOTICE.—In an appeal to the supreme court the statute requires that the undertaking be filed within five days after service of notice of appeal. If the undertaking be filed before the notice of appeal is served, the appeal will be dismissed.—*Little* v. *Jacks.*—Filed May 27, 1886.—Cal.

APPEAL.—ORDER REFUSING TO SET ASIDE AN ORDER WHICH IS ITSELF APPEALABLE.—The supreme court will not take jurisdiction of an appeal, from an order refusing to set aside an order which was a final judgment, and was itself appealable. An order refusing to transfer a cause to the United States court may be reviewed as an intermediate order.—*Tripp* v. *S. R. St. Ry. Co.*—Filed May 26, 1886.—Cal.

APPEAL.—WHEN IT OPERATES AS A STAY OF PROCEEDINGS.—An appeal taken in term time, and perfected within the prescribed time, works a stay of any further proceedings under the judgment. If the appeal be prayed for in vacation, and no bond given, it does not suspend or stay proceedings.—*June* v. *Payne.*—Filed June 3, 1886.—Ind.

ARREST WITHOUT WARRANT.—MEASURE OF DAMAGES.—An arrest without warrant, unless made upon the testimony of an eye-witness, is illegal. The measure of damages for such illegal arrest is the actual damages sustained, unless through carelessness or intentional wrong a punishment is inflicted, when punative damages may be assessed.—*Ross* v. *Leggett.*—Filed June 10, 1886.—Mich.

ATTACHMENT OF PARTNER'S INTEREST.—THE INSOLVENT PARTNER HAVING OVERDRAWN HIS ACCOUNT.—The creditor of one of the partners in a firm may attach the partner's interest in the firm assets, although it be true that the insolvent partner has overdrawn his account with the firm. The creditor has a right to attach and demand an accounting, although in the end he finds the interest of the debtor has been exhausted.—*Trafford* v. *Hubbard.*—Filed June 11, 1886.—R. I.

ASSIGNMENT OF JUDGMENT.—MISTAKE IN RECORD.—EQUITABLE ASSIGNMENT.—Where one sells and assigns a judgment, and in making the transfer on the records, by mistake, the entry is made on the wrong record, still it will operate as an equitable assignment, and the assignee may off-set it against a judgment held against him by the judgment debtor.—*Trybarger* v. *Andel.*—Filed May 13, 1886.—Ind.

ATTORNEY AND COUNSELLOR.—LIEN FOR FEES.—NOTICE.—An attorney who is a member of a law firm, composed of three persons, receives a draft from a railway company for the purpose of settling a claim in a pending suit. Notice by the opposing counsel, of his claim of a lien on the funds for fees, given to the other members of the firm, co-partners of the one who had the the funds, is not such notice as will give him a lien.—*St. L. & S. F. Ry. Co.* v *Bennett.*—Filed June 4, 1886.—Kans.

BAIL AND RECOGNIZANCE.—DEPARTURE AFTER TRIAL AND BEFORE CONVICTION.—FORFEITURE.—Where the condition of a recognizance was that defendant should appear and not depart the court without leave, and after trial, but before verdict, he did depart. *Held* that his bail and recognizance was forfeited.—*Magie's Appeal.*—Filed February 15, 1886.—Pa.

BANKS AND BANKING.—FALSELY PERSONATING ANOTHER.—PAYMENT OF A DRAFT.—Where a party falsely represented himself as the owner of certain lands, and executed a mortgage thereon and obtained a loan of money thereby, the bank loaning the money made a draft payable to the mortgagor, who assumed the name of the real owner, and delivered it to him. The draft was presented at another bank and paid. *Held* that the bank issuing the draft

cannot recover the money of the bank which paid the draft.—*Emporia Nat. Bank* v. *Shotwell.*—Filed June 4, 1886.—Kans.

BILL OF EXCEPTIONS.—AMENDING DURING THE TERM AND SUBSEQUENT TO THE TERM.—The trial judge may amend a bill of exceptions of his own motion, during the term in which it is filed, and without notice, but subsequent to the term it cannot be amended except upon notice and motion in open court. An abstract made by clerks of a firm in the abstract business, and signed by the firm themselves, is held to be an original abstract and not a copy.—*Heinsen* v. *Lamb.*—Filed May 15, 1886.—Ill.

BUILDING CONTRACT.——ACTION FOR BREACH.—MEASURE OF DAMAGES.—In case of breach of a contract, for erecting a building, the contractor may recover as damages the profits which he would have realized by the execution of the work. The difference between the cost of performance and the contract price is the measure of damages.—*Boyd* v. *Meighan.*—Filed June 23, 1886.—N. J.

CARRIERS OF PASSENGERS.——EJECTING PASSENGER.—CARE WHICH MUST BE EXERCISED.—The conductor in charge of a car, in ejecting a trespasser, must not endanger the life of the trespasser If he ejects him in a manner so harshly or negligently as to endanger his life and personal injury ensues, the company is liable for damages.—*Biddle* v. *H. & M. F. P. Ry. Co.*—Filed May 3, 1886.—Pa.

CHATTEL MORTGAGES.——NEGOTIABILITY OF.—TRANSFER OF NOTE SECURED BY CHATTEL MORTGAGE.—It is held to be a rule well established (7 Minn. 176 and 22 Minn 559) that the transfer of a note, secured by a chattel mortgage, does not carry with it the security in its negotiable character. Any defense may be set up against the mortgage, in the hands of the transferee, that would have been available as against the mortgagee.—*Oster* v. *Mickley.*—Filed May 28, 1886.—Minn.

CHAMPERTY.——CONDITIONAL FEE NOT CHAMPERTY.—A devisee, under a will, of certain real estate, apprehending an attack upon his interests, by an adverse claimant, made a contract with an attorney to convey to him a certain portion of the land in consideration of his defending his title. *Held* that such contract by the attorney was legitimate and was not champerty.—*Fowler* v. *Callan.*—Filed June 1, 1886.—N. Y.

CONSTITUTIONAL LAW.—PLACE OF HOLDING COURTS CANNOT BE ARBITRARILY FIXED BY THE LEGISLATURE.—The constitution provides that the terms of the district court shall be held at the county seats of the respective counties. An act passed by the legislature fixing the holding of the court at a place which is not, and never has been, the county seat is unconstitutional. A juror attending at such place cannot collect his fees as juror.—*Coulter* v. *Com'rs of Routt Co.*—Filed June, 1886.—Col.

CONSTRUCTION OF CONTRACT.—CONSISTING OF SEVERAL WRITINGS.—Where an agreement consists of several different writings, the different parts should each be given their due weight in determining the meaning of the whole. There should be given to each word its plain and obvious meaning, which the context and the whole instrument require.—*C. S. & C. Ry. Co.* v. *I. B. & W. Ry. Co.*—Filed June 1, 1886.—Ohio.

CONVEYANCE OF SEPARATE PROPERTY OF WIFE.——CONSIDERATION.——VACATION OF DEED BY THOSE OBTAINING THE CONVEYANCE.—A conveyance by a wife, of her separate property in trust, to secure the payment of her husband's debts, is supported by a sufficient consideration, and the conveyance cannot be set aside on the ground of fraud unless the fraud is clearly established. The creditors who obtained the wife's conveyance, cannot subsequently have the deed cancelled and the conveyance set aside.—*Martin* v. *Globe Ins. Co.*—Filed May 14, 1886.—Ill.

CONTRACT BY AN INFANT.—AFFIRMANCE.—RECORD OF BAPTISM ADMITTED AS EVIDENCE.—The contract of an infant may be affirmed, after maturity, by any distinct acknowledgement or act, which signifies an intention to be bound by the contract. Ratification may be inferred from a continued attitude of the infant, after arriving at full age, which is only consistent with a declaration of approval or ratification. The record of baptism may be used in evidence in establishing the age of an infant.—*Durfee* v. *Abbott*.—Filed June 10, 1886.—Mich.

CONTRACT,—SERVICES RENDERED WITHOUT ANY EXPRESS CONTRACT BY A RELATIVE.—Where a son-in-law rendered services to his father-in-law during his lifetime, without any express agreement, and it appears that the services were such as would naturally be rendered gratuitously, he cannot maintain an action for compensation against the executor of the father-in-law.—*Bonney, Exr.* v. *Haydock*.—Filed Oct. 5, 1885.—N. J.

CONTRACT OF HIRING.—TERM OF ONE YEAR COMPENSATION PAYABLE MONTHLY.—In a contract of hiring the fact that wages are payable monthly or quarterly is not inconsistent with a yearly contract. A party addressed a letter to another offering him $100 per month and said, "If you give me satisfaction at the end of the year, I will increase your wages accordingly." The offer being accepted it was *held* to be a contract for one year.—*Norton* v. *Cowell*.—Filed May, 1886.—Md.

CONTRACT.—WHEN NOT DEVISABLE.—Where a broker made a sale and the following memoranda was the basis or terms: "Sold to ——— Scotch pig-iron, to arrive as specified below: 500 tons of Coltness pig-iron at 36 per ton for shipment to be due here in April next; 500 tons of Caulder pig.iron, at 35 per ton, for shipment, to be due here in March next,—payable, on arrival here, by four months note, indorsed by the above named parties, with interest added at 6 per cent." *Held* that the contract was one and indivisible, and failure to deliver the first lot released the buyer from receiving the second.—*Pope* v. *Porter*.—Filed June 1, 1886.—N. Y.

CORPORATIONS.—SERVICE ON OFFICER OR AGENT.—FOREIGN CORPORATION.—Service of a summons on an officer or agent of a foreign corporation, while in the state but not on business, is good. He cannot throw off his representative capacity at will to defeat the object of the statute. A plea filed without notice, the service of the summons being good, the irregularity of not moving to strike off the plea, before judgment by default, will not invalidate the judgment.—*S. H. & H. Irou Co.* v. *S. L. W. Coal Co.*—Filed April 29, 1886.—Mich.

CORPORATIONS.—SUBSCRIPTION TO STOCK. LIABILITY OF SUBSCRIBER.—A subscriber to stock in a corporation not only becomes bound to pay to the corporation the amount of the stock, but he becomes bound to its creditors. Upon condition broken by the corporation, the subscriber must, in order to be released from his subscription, without delay give notice that he will no longer be bound and demand that his subsubscription be cancelled.—*Lee* v. *Granger Market Co.*—Filed June 17, 1886.—Oregon.

CRIMINAL LAW.—A CRIME COMMITTED IN TWO COUNTIES.—JURISDICTION.—Where a conspiracy was formed in one county to commit murder, and the victim was seized and taken to another county and killed, the court in either county has jurisdiction of the crime. Likewise, where an assault is made in one county and the killing done in another.—*Archer* v. *State*.—Filed May 24, 1886.—Ind.

CRIMINAL LAW.—NEW TRIAL.—BASED UPON CUMULATIVE OR IMPEACHING TESTIMONY.—As a general rule a new trial cannot be had, based on new evidence which is cumulative or, for the purpose of impeaching a witness, but there are exceptions to

this rule. New evidence, although cumulative, of a somewhat different character from that which was produced, may be just grounds for a new trial.—*Fletcher* v. *People.*—Filed May 15, 1886.—Ill.

CONSTITUTIONAL LAW.—ENACTMENT OF A LAW BY THE AID OF THE VOTE OF A MEMBER WHOSE SEAT IS CONTESTED.—Where the seat of a member of the legislature is contested and, the members opposing his being seated absent themselves, thereby leaving less than a quorum present, and thereupon the member, whose seat is contested, is permitted to take his seat and thereby a quorum is made up, a law passed by the legislature thus constituted, and regularly signed by the presiding officer, cannot be impeached by parol evidence of the proceedings of the legislature. —*State Ex. Rel Herron* v. *Smith.*—Filed June 29, 1886,—Ohio.

CORPORATION.—AGREEMENT MADE WITH PARTIES ABOUT TO FORM A CORPORATION.—Where parties, about to form a corporation, made a contract to purchase certain machinery for the use of the corporation when formed, and afterwards proceeded to organize, the corporation thus formed is not a party to the contract and cannot compel the contracting parties to fulfill the agreement.—*Penn Match Co.* v. *Hapgood.*—Filed Feb. 25, 1886.—Mass.

CRIMINAL LAW.—INDORSEMENT OF NAMES OF WITNESSES ON THE INDICTMENT.—The indorsement of witnesses names, who appear before the grand jury, on the back of an indictment, is necessary to its validity. Where the names of five witnesses were endorsed, and a memorandum annexed "For other witnesses see Officer Palmer," the indorsement is sufficient and the memoranda immaterial and harmless.—*Andrews* v. *People.*—Filed May 15, 1886.—Ill.

CRIMINAL LAW.—SECOND TRIAL FOR SAME OFFENSE.—FORMER INDICTMENT PLEADED IN BAR.—Where one has been indicted for simple assault, and convicted, and upon motion in arrest of judgment and new trial, the verdict and indictment is set aside and defendant again indicted for an assault with intent to disfigure, he cannot plead the former indictment in bar of the action.—*State* v. *Clark.*—Filed June 18, 1886.—Ia.

CRIMINAL LAW.—QUASHING AN INDICTMENT WHEN ONE OF THE COUNTS IS GOOD.—If one of several counts in an indictment is good, it will be sustained. It is error for the court to instruct the jury that, killing in self-defense must be done under a "well founded belief" that it is necessary in order to save his own life. The theory of self-defense is, that the party assailed has the right to repel force by force, and he need not believe that it is necessary to kill his assailant in order to save his own life.—*Bryant* v. *State.*—Filed May 25, 1889.-Ind.

DEED.—CERTIFICATE OF ACKNOWLEDGEMENT.—OMISSION NOT CURED BY SEAL.—Where the statute requires, that an officer, taking an acknowledgement of a deed, must set forth the title of his office, a certificate which reads "I, ——, a notary public in said city, and for said county, do hereby certify &c.," is not good, and the defect cannot be cured by affixing the notarial seal on which the name of the city and state appear.—*Greenwood* v. *Jenswold, Jr.*—Filed June 11, 1886.—Iowa.

DIVORCE.—ADULTERY.—EVIDENCE SUFFICIENT TO SUSTAIN THE CHARGE OF ADULTERY.—In an action for divorce, on the ground of adultery, the evidence need not be positive, or strictly limited to the time and place charged. The proof of circumstances, which will leave no doubt in the mind of a reasonable and just man, that the act was committed, is sufficient.—*Ewing* v. *Ewing.*—Filed May 27, 1886.—N. J.

DEPOSITION.—OBJECTION TO THE READING OF.—HEARSAY EVIDENCE.—On the trial of a case objection was made to the

reading of a deposition because, it contained the averment that, deponent had heard the parties "say that they had sold," a piece of real estate, "and talk it together" that one of them was trying to collect the purchase money. The objection was overruled and deposition admitted. *Held* that it was properly admitted., that the evidence was not hearsay.—*Depew, Ex'rs* v. *Depew.*—Filed March 29, 1886.—Pa.

DIVORCE.—COHABITATION AS EVIDENCE OF MARRIAGE.—NO MARRIAGE CONTRACT.—Where a man lived and cohabited with a woman, the wife of another man, they both supposing her husband dead, which was not a fact, and upon learning that the husband was living, he abandoned her and married another woman, the married woman with whom he lived brought an action for divorce, on the assumption that their having lived together constituted a marriage contract. *Held* that as their cohabitation was illegal she could not maintain her action.—*Harbeck* v. *Harbeck.*—Filed June 1, 1886.--N. Y.

DURESS.—-THREAT BY AN OFFICER.—CHATTEL MORTGAGE.—Where an officer has a writ, requiring him to arrest a debtor, it is not duress for him to threaten to take the debtor to jail unless he pays or secures the payment of the debt, for which the commitment was issued. The mortgagor of a chattel mortgage cannot defend, against the right of possession by the mortgagee, on the ground of nonownership of the property by the mortgagor.—*Bunker* v. *Steward.*—Filed June 5, 1886.—Me.

DRAINS AND SEWERS.——INJUNCTION AGAINST CONSRUCTION OF SEWER ON THE GROUND THAT IT MAY PRODUCE INJURY.—Where a city is about to construct a sewer and a land owner is apprehensive that, in the course of two or three years, the accumulation from the discharge, and deposits from the sewer would work an injury to his land, he cannot obtain an injunction restraining the city from constructing the sewer on those grounds.—*Morgan* v. *Binghamton.*—Filed June 1, 1886.—N. Y.

EASMENTS.—ESTOPPEL.—TESTIMONY OF THE HUSBAND OF GRANTOR.—Where an owner of property has sold lots from a private plat, assuring the purchaser that the plat will be recorded, the grantor cannot subsequently deny the existence of the easement in the alleys described on the plat. The husband of the grantor cannot testify as to her intentions in making and exhibiting the plat.—*Cihak* v. *Kleke.*—Filed May 15, 1886.—Ill.

EQUITY.—BILL TO IMPEACH DECREE ON THE GROUND OF FRAUD.—ASSIGNMENT OF ERRORS BY CO-COMPLAINANT WHO HAS NOT APPEALED.—In a bill to impeach and vacate a decree, on the ground that it was fraudulently obtained, errors committed prior to the rendering of the decree cannot be set out. Where judgment has been rendered against several defendants, and one of the defendants has taken an appeal, a co-defendant, who has not prayed appeal, cannot be heard to allege errors on the record. —*Howe et. al.* v. *South Park Commissioners.* —Filed May 14, 1886.—Ill.

EQUITY.—.RECISSION OF CONTRACT.—RESTORATION MUST BE TENDERED.—Upon filing a bill to rescind a contract, a return, or an offer to return, of any consideration received must be made. The defendant must be restored to all his existing rights prior to making the contract or a demurrer to the bill will be sustained.—*Dillman* v. *Nadlehoffer.*—Filed May 15, 1886.—Ill.

EVIDENCE.—CERTIFICATE BY PUBLIC OFFICER.—CANNOT CERTIFY FACTS.—A public officer may certify a copy of a record, which may be competent evidence, but cannot certify facts contained in the record. The certificate of the secretary of state, attached to a lease, certifying that two of the persons named in the lease were at a certain time, commissioners of fisheries, the lease not be-

ing in the hands of the officer, is extra-official and not competent evidence.—*Commonwealth* v. *Richardson.*—Filed May 12, 1886.—Mass.

EVIDENCE.—PREPONDERANCE OF CONFLICTING TESTIMONY.—NUMBER OF WITNESSES.—Where the evidence of several witnesses is in direct conflict, in determining to which side the preponderance is to be given, the number of witnesses is an important fact to consider. The testimony of the greater number is more likely to be true.—*Keutner* v. *Kline.*—Filed June 29, 1886.—N. J.

EVIDENCE.—IMPROPERLY ADMITTED BUT SUBSEQUENTLY WITHDRAWN.—EFFECT OF.—Evidence improperly admitted against objections, and subsequently withdrawn by the party offering it, is not ground for error, if the court instruct the jury to wholly disregard it. A statute exempting from levy and sale "two cows and a calf," does not include a yearling.—*Mitchell* v. *Joyce.*—Filed June 15, 1886.—Iowa.

EVIDENCE.—CONTRACT IN WRITING MODIFIED BY PAROL.—EVIDENCE OF NON-DELIVERY.—Whilst the terms of a written contract connot be varied by parol testimony, the non-delivery of the contract may be shown by parol. The possession of a contract by one of the parties raises a presumption of its delivery by the other, but oral testimony may be introduced to rebut such presumption. The delivery of a contract in writing is essential to its validity.—*Biederman* v. *O'Connor.*—Filed March 29, 1886.—Ill,

EXECUTORS AND ADMINISTRATORS.—SETTING ASIDE AN ALLOWANCE FOR EXPENSES AFTER INCURRED.—Where the court made an allowance for reinterring the remains of decedent, upon false representatioas by the administrator, it subsequently set aside the allowance on petition of the heirs. *Held* rightfully set aside although the money had been expended on the faith of the order.—*Watson* v. *Romine.*—Filed May 20, 1886.—Ind.

EXECUTION.—LEVY AND SALE AFTER VERDICT BUT BEFORE JUDGMENT.—PRESUMPTION AFTER LAPSE OF TIME.—Where a verdict has been rendered but no judgment upon the verdict is entered, and an execution issues and property is sold thereunder, a subsequent purchaser cannot be ousted of his title thus acquired by entry of a judgment.—*Ninde* v. *Clarke.*—Filed June 27, 1886.—Mich.

EXECUTORS AND ADMINISTRATORS.—DISTRIBUTION.—ABSENT HEIR AND HIS RIGHTS.—Executors or administrators failing to follow the statutory provisions, respecting the distribution of an estate are liable on their bond. An absent heir maysue on an executor's bond for his portion, if he appears before the limitations have run.—*Shriver* v. *Reister.*—Filed April 30, 1886.—Md.

FIRE INSURANCE.—OCCUPANCY OF A DWELLING HOUSE.—MEANING OF THE WORD PREMISES.—Where an insurance policy is conditioned that, if the dwelling house insured becomes or remains unoccupied, the policy shall be void. Occupying the house for the purpose of storing tools, jars, &c. is not such an occupancy as is contemplated in the policy. The word "premises" in a policy means the buildings insured and not the land on which the building is erected.—*Sexton* v. *Hawkeye Ins. Co.*—Filed June 14, 1886.—Iowa.

FRAUD.—PLEADING.—CHANGE OF VENUE.—VACATING ORDER.—In a plea of fraud, the facts must be clearly stated, that the court may determine whether the charge of fraud is well founded or not. A change of venue ordered by the superior court, upon payment of costs, may be vacated if the costs have not been paid, and when a motion to vacate is made it is too late for the party to pay or offer to pay.—*Estep* v, *Armstrong.*—Filed May 20, 1886.—Cal.

FRAUDULENT CONVEYANCE.—EXTENT TO WHICH BONA FIDE PURCHASERS WILL BE PROTECTED.—When property, subject to the

debts of its owner, is conveyed to a third party in fraud of creditors, parties purchasing from the third party, in good faith and without any notice of the fraud, will be protected to the extent of the purchase money paid.—*Graves* v. *Winans.*—Filed May 27, 1886.—N. J.

FRAUDULENT REPRESENTATIONS IN THE SALE OF LAND.—MEASURE OF DAMAGES.—In the sale of land, where fraudulent representation are made as to quality, condition or value of the land, the measure of damages is the difference between the value as represented, at the time of sale, and the actual value of the same.—*Horde* v. *Walton.*—Filed May 15, 1886.—Ill.

FRAUDULENT SALE.—EVIDENCE.—ATTACHMENT.—BURDEN OF PROOF.—Where fraud is alleged in the transfer and sale of goods, the testimony of the seller and of the purchaser as to all the facts and circumstances attending the sale, is competent. Where goods sold are attached in the possession of a third party, the burden of proof is on the sheriff to show fraud in the transfer.—*Angel* v. *Pickarn.*—Filed June 17, 1886.—Mich.

GRAND JURY.—CONTEMPT BY WITNESS.—POWER OF COURT.—The grand jury is a part of the court by which it is convened and witnesses appearing before it are subject to the lawful authority of the court. A grand jury is dissolved by a final adjournment or by the selection of a new list of grand jurors.—*In Re Gannon.*—Filed May 22, 1889.—Cal.

GUARDIAN'S BOND.—NOT AFFECTED BY THE DEATH OF ONE OF THE WARDS.—Where one is appointed guardian for several persons, one bond may be given for the discharge of his duty to the several wards, and the death of one of the wards will not affect the validity of the bond as to the others.—*Winslow* v. *People.*—Filed May 15, 1886.—Ill.

GUARDIAN.—SETTLEMENT.—ACTION UPON BOND.—Where a settlement has been had and an action commenced on the guardian's bond for recovery of the amount due the ward, the settlement is conclusive and the sureties on the guardian's bond cannot be heard as to the correctness of the final settlement and account.—*Branden* v. *Mercer.*—Filed June 1, 1886.—Ohio.

HOMESTEAD IN PARTNERSHIP PROPERTY.—INTEREST OF PARTNER.—LIMITATIONS OF.—Partnership property, of whatsoever kind, is a fund held for partnership purposes as a distinct entity. The interest of a partner therein is limited to his portion of the surplus, after the firm debts are paid. A partner cannot have a homestead in the real estate of the firm as against a partnership debt. The statute allowing homestead exemptions does not apply to partnership property.—*Trowbridge* v. *Cross.*—Filed May 14, 1886.—Ill.

HOMESTEAD.—ABANDONMENT.—ABSENCE OF THE OWNER FOR THREE YEARS.—A wife being the owner of a homstead dies, and her husband procured a friend to move into and occupy the house furnished, and free of rent. He then went off and prosecuted the business of mining for three years, intending all the time to return. *Held* that by his absence he had not lost his right to curtesy in the homestead of his deceased wife, as he had not intended to abandon it.—*Dennis* v. *Omaha Nat. Bank.*—Filed May 27, 1886.—Neb.

HOMESTEAD.—ABANDONMENT.—THE INTENTION OF THE HUSBAND IN REMOVING.—A removal from a homestead works an abandonment of it, if the head of the family does not intend to return to the same. The intention of returning, or not, is the point on which the fact of abandonment turns. If the husband be living, he is the head of the family and his intentions in the matter of returning determines the question, no matter what may be the intentions of other members of the family.—*Williams* v. *Moody.*—Filed June 1, 1886.—Minn.

HOMICIDE.—PROVOKING AN ASSAULT AND THEN KILLING THE ASSAILANT.—INSTRUCTION.—In a trial for murder, if it be shown that the defendant purposely provoked an assault, with the intention of killing his assailant, he cannot plead self-defense. If, however, the assault was the result of provocation offered by the defendant, without any such deadly design, he is not estopped from interposing the plea of self-defense. To instruct the jury that malice is proven, by the selection and use of a deadly weapon without lawful excuse, is error.—*State* v. *Perigo*.—Filed June 14, 1886.—Iowa.

HUSBAND AND WIFE.—DIVORCE.—WHAT CONSTITUTES CRUEL TREATMENT.—Writing obscene and indecent letters, by husband to his wife; accusing her of adultery; compelling her to submit to sexual intercourse when in ill health and against the advice of her physician, constitute cruelty which justify a decree of divorce.—*Walsh* v. *Walsh*.—Filed June 17, 1886.—Mich.

HUSBAND AND WIFE.—INJURY TO WIFE.—CAUSE OF ACTION IN ALL PLAINTIFFS.—EXCEPTION TO RULE.—It is a general rule that a complaint which does not show cause of action in all plaintiffs is bad on demurrer. Where the plaintiffs are husband and wife this rule does not apply. In an action by the wife, in which her husband joins, to recover for a personal injury to her, the jury cannot include damages to the husband for which he might recover in a separate action.—*O. & M. Ry. Co.* v. *Crosby*.—Filed June 4, 1886.—Ind.

HUSBAND AND WIFE.—DIVORCE AND ALIMONY.—FAILURE TO PAY MONEY ORDERED PAID.—In a suit for divorce where a husband is ordered to pay a certain sum of money, intended as a temporary alimony, but not so specified in the order, the nonpayment as ordered does not constitute contempt of court, and he cannot be denied his right to defend his action in the matter. Where a defendant has filed pleadings traversing the allegations of the complaint, he is entitled to be heard in defense of the action, unless such right be denied by statute.—*Bailey* v. *Bailey*.—Filed June 12, 1886.—Iowa.

HUSBAND AND WIFE.—FRAUDULENT CONVEYANCE BY HUSBAND.—Where a husband, owing interest to his wife, executes a mortgage on his real estate for a loan of money which he pays to his wife, it is *held* to be in fraud of existing creditors and the creditor may collect the money of the wife.—*Watson, Rec.* v. *Cummins*.—Filed Oct. 7, 1885.—N. J.

HUSBAND AND WIFE.—JURISDICTION IN DIVORCE PROCEEDINGS.—ACTION MUST BE COMMENCED IN THE COUNTY WHERE LIBELANT RESIDES.—In an action of divorce, commenced in a county other than that in which the libelant resided, the action was dismissed for want of jurisdiction. *Held* rightfully dismissed. The common pleas court of the county in which the libelant resides alone has jurisdiction.—*Sherwood's Appeal*.—Filed Feb. 23, 1886.—Pa.

HUSBAND AND WIFE.—LIABILITY OF WIFE FOR NECESSARIES.—STATUTE OF LIMITATIONS.—Under section 2562 of the Code a married woman may be sued without joining her husband. Where medical attendance was furnished and the husband subsequently gave his promissory note in settlement of the same, and the note not being paid an action is brought against the husband and wife. The statute of limitations had run as to the last item in the account and the wife pleaded the statute. As to the note the statute had not run. *Held* that the wife could not plead the statute as long as her husband could not do so.—*Waggoner* v. *Turner*.—Filed June 15, 1886.—Iowa.

HUSBAND AND WIFE.—DIVORCE.—DISPOSITION OF PROPERTY—In an action of divorce, where the disposition of property is not made the subject of the pleading, either originally or by supplemental plea, the court cannot enjoin the transfer of property

by defendant. The issue as to the property must be tendered before the court can make any such order.—*Remington* v. *Superior Court.*—Filed May 27, 1886.—Cal.

HUSBAND AND WIFE.—LAND PURCHASED WITH THE WIFE'S MONEY BUT CONVEYED TO HUSBAND.—Where the wife furnished money for the purchase of land, and the husband, without the consent of his wife, caused the deed to be made to him, *held* that he holds the land in trust for his wife and his creditors cannot reach it for his debts.—*Mitchel* v. *Colglazier.*—Filed May 24, 1886.—Ind.

HUSBAND AND WIFE.—REAL ESTATE ACQUIRED BY WIFE.—ALIENATION AFTER SECOND MARRIAGE.—Where a woman acquires real estate by virtue of her first marriage, and there are no children by her first marmarriage, she has power to alienate the same after again marrying, whether she took by inheritance or otherwise.—*McKinney* v. *Smith.*—Filed May 21, 1886.—Ind.

HUSBAND AND WIFE.—DIVORCE.—WHAT ACTS OF LIBELANT WILL BAR AN ACTION.—General inquitious conduct with regard to a suit, will not bar the action, but an evil act in reference to some particular matter will. A husband who indirectly allures his wife to commit adultery will be held as consenting to such acts, and cannot on such grounds maintain an action for divorce.—*Woodward* v. *Woodward.*—Filed June 3, 1886.—N. J.

INDORSEMENT OF GUARANTY WITHOUT AUTHORITY.—NOTE DISCOUNTED AND PROCEEDS USED BY GUARANTOR.—A note is endorsed by an agent, whose authority to do so is denied, and the note thus indorsed is discounted and the proceeds placed to the credit of the guarantors, against which checks are drawn. *Held* that the guarantors cannot deny the authority of the agent unless they returned the money drawn, and they are held liable to the amount of such proceeds drawn out of bank.—*1st Nat. Bank* v. *Oberne.*—Filed May 15, 1886.—Ill.

INSTRUCTIONS.—SUMMING UP EVIDENCE ON ONE SIDE ONLY.—FINDINGS OF FACT BY LOWER COURT.—Where the instructions of the court consist in summing up the evidence on one side to the exclusion of the evidence on the other side, it is gross error. Upon appeal, from the appellate to the supreme court, the finding of the appellate court on a question of fact, is final. The findings of the circuit court in like manner are not final.—*Town of Evans* v. *Dickey, Ex'x.*—Filed June 12, 1886.—Ill.

INSOLVENCY PROCEEDINGS.—DISSOLUTION OF PRIOR ATTACHMENTS.—TIME FOR EXECUTION OF ASSIGNEE'S BOND.—An assignment for the benefit of creditors, under chapter 148 Laws of 1881, works a dissolution of prior attachments of the debtor's property. If an assignee executes his bond within the time allowed and delivers it to the judge for approval, his rights as assignee are not affected by the delay of the judge in approving and returning the same.—*Johnson. Assignee* v. *Bray, Sheriff.*—Filed May 28, 1886.—Minn.

INTOXICATING LIQUORS.—ACTION FOR DAMAGES UNDER THE CIVIL DAMAGE ACT.—SELLING TO A HABITUAL DRUNKARD.—In an action by a widow to recover damages from one who sold intoxicating liquor to her husband, by reason of which her husband is said to have lost his life, the fact that her husband had for years been a habitual drunkard, and the fact that the plaintiff had, in his life time, been in the habit of surrendering to him, from time to time, small sums of money, knowing that he would spend the same for liquor, is no bar to her recovery. The question should go to the jury.—*Huff* v. *Aultman.*—Filed June 12, 1886.—Iowa.

INTOXICATING LIQUOR.—ACTION UNDER THE CIVIL DAMAGE ACT.—EVIDENCE.—In an action under the civil damage act, for illegally selling liquor to a habitual drunkard, where it is shown that defendant kept a liquor store, that he knew plaintiff's husband to be a habitual drunkard; and the plaintiff

testifies that she saw her husband drinking liquor in defendant's store, and that she requested defendant not to sell him liquor, the evidence is sufficient to require a submission to a jury.—*O'Connor* v. *Cousen.*—Filed June 1, 1886.—N. Y.

JOINT TENANTS AND TENANTS IN COMMON.—TAX TITLE PURCHASED BY ONE TENANT AS AGAINST HIS CO-TENANT.—One tenant in common, in possession of the land, cannot obtain title to the whole as against his co-tenant, by purchase of the land at a tax sale. Nor can he invoke the aid of the statute of limitations in support of his claim.—*Minter* v, *Dunham.*—Filed June 1, 1886.——Oregon.

JOINT TENANTS AND TENANTS IN COMMON.—REDEMPTION FROM TAX SALE INURES TO BENEFIT OF ALL.—One co-tenant cannot hold adversely to other co-tenants, and where one co-tenant redeems the land from a tax sale it inures to the benefit of all co-tenants alike. The one redeeming and taking title in his own name holds in trust for his joint tenants. A decree may be had compelling a conveyance according to equity.—*Lomax* v, *Gindell.*—Filed May 15, 1886.—Ill.

JUDGMENT AGAINST MINOR.—NO GUARDIAN.—JUDGMENT VOIDABLE.—Where an action has been brought against a minor, for whom no guardian has been appointed, and judgment obtained, such judgment is not absolutely void but may be voided by a direct proceeding. It cannot be attacked collaterally for errors not jurisdictional.—*Millard* v. *Marmon.*—Filed May 14, 1886.—Ill.

JUDGMENT.—REVIVED AFTER DEATH OF DEFENDANT.—NOT EXTINGUISHED BY BANKRUPTCY PROCEEDINGS.—Where a judgment was revived after death of defendant, and judgment entered without limitation as to the lien on a proceeding in the orphan's court for the sale of lands, it cannot be urged that the lien is extinguished by being proven in bankruptcy proceedings which are still pending.—*Appeal of Bucknor.*—Filed Feb. 8, 1886.—Pa.

JUDGMENT.—RES ADJUDICATA.—FOREIGN JUDGMENT.—Where an action was commenced in this state and subsequently an action for the same cause is commenced in the state of New York, the latter being prosecuted to judgment, is a bar to the further prosecution of the action first commenced in this state. Such judgment may be pleaded or proved under the general issue.—*Whiting* v. *Berger.*—Filed June 14, 1886.—Me.

JUSTICE OF THE PEACE.—CONFESSION OF JUDGMENT NOT AT HIS OFFICE.—Where a justice of the peace went to the house of a defendant and, the defendant waived the service of summons and confessed judgment for the claim, and the justice thereupon returns to his office and makes the entry upon his docket, such judgment is neither void nor voidable by reason of the irregularity of the proceedings.—*Kreuger* v. *Berkham.* Filed June 4, 1886.—Kans.

JUSTICE OF THE PEACE.—PRACTICE.—MISTAKE IN THE ENTRY OF THE DATE FOR TRIAL.—A justice of the peace, having granted a continuance of a case until the 16th day of the month, by mistake made the entry on his docket as continued till the 15th. On the 15th the defendant appeared and, the plaintiff not being present, the suit was dismissed. On the 16th the plaintiff appeared and upon his motion the judgment of dismissal was set aside and a day set for trial of which defendant was notified. *Held* that the justice did not err in the vacation of the judgment.—*Petrie* v. *Karsch.*—Filed June 4, 1886.—Kans.

LACHES.——DISABILITY BY INFANCY.—BRINGING AN ACTION AFTER ARRIVING AT FULL AGE.—Where an infant sustains an injury and does not bring an action for damages until he arrives at full age, he is not chargeable with laches. Where the injuries are alleged to have caused immediate dis-

ablement and to have been continuous, the defendant is entitled to have the instruction given that if plaintiff attended school the next day after the injury he is not entitled to recovery.—*Thurstin* v. *Luce.*—Filed May 6, 1886.—Mich.

LANDLORD AND TENANT.—DISTRAINT FOR RENT.—COLLATERAL PAROL AGREEMENT FOR REPAIRS.—Where a tenant leased property and, the landlord made a collateral parol agreement to make certain repairs, which he failed to do and distrained for rent, in an action of replevin for the goods distrained, the tenant was denied the right to prove the parol agreement.—*Eberle* v. *Girard Life Ins. Co.*—Filed Feb. 1, 1886. —Pa.

LANDLOED AND TENANT.—LEASE EXECUTED BY AN AGENT WITHOUT AUTHORITY. —Where an agent executes a lease, without authority, no term is vested in the lessee, and if he enters he holds at will. The covenants of the lease cannot be enforced against the lessee but the lease may be admitted as evidence of the value of the rental.—*Jennings* v. *McComb.*—Filed May 10, 1886.—Pa.

LANDLORD AND TENANT.—LESSEES OF A COAL MINE.—AGREEMENT TO PAY CERTAIN TAXES.—The lessees of a coal mine stipulated that they should pay all taxes except the taxes on the land. In an action for rent by the lessor the lessees claimed a set-off of taxes paid on the improvements which they had made. *Held* that the set-off could not be sastained. The lessees were held to pay all taxes except those on the land.—*Hecksher* v. *Sheafer.*—Filed February 8, 1886.—Pa.

LIBEL.—.CORPORATION.—OFFICER OF LIABLE INDIVIDUALLY.—Where a newspaper, published by a corporation, publishes a libel, an officer of the corporation is not liable individually for the publication, but if an officer is also general manager of the corporation he may be held for the publication if it was unjustifiable.—*Nevin* v. *Spikeman.*—Filed Feb. 1, 1886.—Pa.

LIBEL AND SLANDER.—PUBLICATION OF JUDICIAL PROCEEEINGS.—The publication of facts by an attorney, which he has obtained from his client, concerning a fraudulent transaction, involved in a proceeding in insolvency, where it is his duty to publish the same, such publication is privileged. No one can be permitted to allege malice in a judicial proceeding in that which was rightly done.—*Hollis* v. *Menx.*—Filed May 26, 1886 —Cal.

LIEN.—WRITTEN CONTRACT AND PAROL AGREEMENT THAT IT SHALL BE A LIEN.— Where an indebtedness becomes the subject of an agreement, reduced to writing, in which there is no provision whereby the indebtedness shall be a lien on the property of the debtor, a lien cannot be established by parol agreement to that effect.—*Neuman* v. *Dreifurst.*—Filed June 4, 1886.—Colo.

LIFE INSURANCE.—BENEFIT ASSOCIATION. —CONDITION AGAINST DEATH FROM DISEASE. —A policy of life insurance, technically termed an accident policy, having in it a clause excluding liability for death by disease, is not voided by the fact that, after a serious injury by accident, apoplexy intervenes and death ensues.—*Nat. Benefit Ass'n* v. *Grauman.*—Filed May 24, 1886. —Ind,

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LIFE INSURANCE.—CERTIFICATE ISSUED BY MUTUAL BENEFIT ASSOCIATIONS.—A certificate issued by a mutual benefit association is in effect a policy of life insurance. Where it is not forbidden by the by-laws or charter, a member may at any time change the name of the beneficiary of such insurance.—*Pres. Insurance Fund* v. *Allen.*— Filed June 5, 1886.—Ind.

LIFE INSURANCE.—PAYABLE TO WIFE.— POLICY ALLOWED TO LAPSE AND A NEW ONE ISSUED TO THE HUSBAND.—A life policy, upon the life of the husband payable to his wife, on which she pays a number of

premiums, and after her death the husband causes the policy to lapse and has a new one issued instead, payable to himself, will not defeat the right of the wife's heirs in the policy.—*Nat. Life Ins. Co.* v. *Haley.*—Filed May 26, 1886.—Me.

LIFE INSURANCE.—MUTUAL BENEFIT ASSOCIATIONS.—INSERTION OF NAME OF BENEFICIARY AFTER DEATH OF ASSURED.—If it is clearly understood by the officers of an assurance association, at the time application is made for insurance, that a certain person shall be named as beneficiary, and the name is omitted by mistake or otherwise from the certificate, it may be inserted after the death of the insured.—*Scott* v. *P. M. Relief Association.*—Filed March 12, 1886.—N. H.

MALICIOUS PROSECUTION.—PROBABLE CAUSE.—BURDEN OF PROOF.—The absence of probable cause, without malice, is insufficient to sustain an action for malicious prosecution. Malice may be inferred from want of probable cause, but it is a question of fact for the jury and must be affirmatively proven.—*Emerson* v. *Cochran.*—Filed February 13, 1886.—Pa.

MASTER AND SERVANT.—ABSOLUTE SAFETY IS NOT REQUIRED OF THE MASTER.—RISK ASSUMED BY AN EMPLOYE.—An employe, engaged in the running of railway trains, is presumed to assume the ordinary risk incident to the business. The company is bound, not to furnish the best machinery in existence, but good machinery of its kind, sound and in good repair, and in this condition the company is not liable for injuries arising therefrom.—*C. R. I. & P. Ry. Co.* v. *Londergan.*—Filed May 15, 1886.—Ill.

MASTER AND SERVANT.—INJURY TO EMPLOYE BY FAILURE TO OBEY A SIGNAL TO STOP A TRAIN.—An employe of a railway company has a right to expect that, having given a signal to stop a train, his signal will be obeyed, but if the speed of the train is continued so as to show that the signal has been disregarded, he is bound to take notice of it and not imprudently expose himself to danger.—*Nichols* v. *C. R. I. & P. Ry. Co.*—Filed June 16, 1886.—Iowa.

MASTER AND SERVANT.—MASTER LIABLE FOR NEGLIGEECE OF THE SERVANT.—A servant in charge of his master's business and driving his master's team, and negligently leaving the team to engage in combat with a party, the master is liable for any damage done by the team running away. The party engaging in combat with the servant is not liable for damage although he may have contributed to the same.—*Page* v. *Hodge.*—Filed March 12, 1889.—N. H.

MASTER AND SERVANT.—TORT OF CONTRACTOR.—LIABILITY.—A party appointed and authorized to guard certain lands from trespassers, gave permits to certain parties to cut timber and take away hemlock bark, for which he had no authority. In an action of trespass he is held guilty because he authorized the trespass wrongfully.—*State* v. *Smidt*—Filed May 25, 1886.—Me.

MASTER AND SERVANT.—WHO ARE FELLOW SERVANTS.—WORKING OF COAL MINES.—The master is not liable for damages for injury to a servant resulting from the negligence of a fellow servant. The mining boss, in a coal mine, is a fellow servant with other miners and men engaged with him in the mine, and hence an injury to a miner, caused by his negligence, does not entitle the injured party to recover damages of the master.—*Waddell* v. *Simoson.*—Filed May 10, 1886.—Pa.

MECHANICS LIEN.—WHEN THE LIEN ATTACHES.—TRANSFER OF THE PROPERTY AFTER PETITION IS FILED BUT BEFORE SERVICE.—One who purchases property, against which a petition for a mechanics lien has been filed, and the transfer made before service of process on the owner, takes nevertheless subject to the lien.—*Bennett et. al.* v. *W. S. Min. Co.*—Filed May 15, 1886.—Ill.

MORTGAGE.—ACTION TO SET ASIDE A VOID SALE.—REFUNDING OF PURCHASE MONEY.—Where land is sold under foreclosure of a mortgage, and the sale subsequently shown to be void, the mortgagor cannot have the sale set aside without first refunding or tendering the purchase money to the purchaser. Where a county auditor is about to sell land mortgaged for use of a township, it is sufficient if he publicly ask, before selling, if any one will take a less quantity than the whole of the land and pay the debt.—*Shannon* v. *Hoy*.—Filed June 4, 1889.—Ind.

MORTGAGED CHATTELS.—CREDITOR'S REMEDY IN ATTACHING.—Where chattels are mortgaged by a debtor, and his creditor seeks to attach the goods which are mortgaged, he may seize the goods, and pay or tender to the mortgagee the amount of the mortgage lien, or he may simply levy on the equity of redemption subject to the mortgage.—*Mooney* v. *Broadway*.—Filed Januaey, 1886.—Oregon.

MORTGAGE.—FORECLOSURE SALE.—PERSONAL JUDGMENT FOR AMOUNT OF PRIOR MORTGAGE.—A party purchasing land, subject to several mortgages, at a sale which is had upon foreclosure of a second mortgage, and subsequently having to discharge a prior lien of another mortgage, cannot obtain a personal judgment against the mortgagors for the amount so paid. A purchaser at a foreclosure sale is supposed to bid what he can afford to pay in addition to the discharge of all prior incumbrances.—*Crowley* v. *Harader*.—Filed June 12, 1886.—Iowa.

MORTGAGE.—FORECLOSURE WHERE THE WHOLE MATURES UPON DEFAULT IN PART.—Where land is sold and a mortgage given to secure deferred payments on the purchase money, conditioned that the whole shall become due and payable upon default of a part, coupon notes given for the interest will be considered as part of the purchase money and may be declared on although not yet due.—*Wisner* v. *Chamberlin*.—Filed May 15, 1886.—Ill.

MORTGAGE.—INCREASED BY THE WIFE OF MORTGAGOR ACTING AS HIS TESTATRIX.—RIGHTS OF HEIRS.—The wife of a mortgagor became his administratrix and the mortgagee made sundry advances to her, which she agreed might be added to the mortgage debt. The mortgage was assigned and the assignee undertook to foreclose for the whole debt. *Held* that as it was not shown that the money had been applied to the improvement of the estate, the advancements made to the widow could not be included.—*Percival* v. *Gale*.—Filed Oct., 1885.—N. J.

MUNICIPAL CORPORATIONS.—A BID IN ANSWER TO PROPOSALS SOLICITED, ACCEPTED BY COUNCIL.—A city advertising for offers of land on which to erect a public building, receiving proposals therefor, one of which is accepted by the committee and approved by the mayor, does not bind the city to the purchase. The acceptance must be by ordinance, passed by the council, in order to bind the city.—*Fuller* v. *City of Scranton*.—Filed March 15, 1886.—Pa.

MUNICIPAL CORPORATION.—DUTY TO REMOVE OBSTRUCTIONS IN STREETS.—It is the duty of municipal authorities to remove obstructions, placed in the streets, without any unreasonable delay, and the fact that a temporary deposit of building material has been placed there by permission, does not relieve the city from the duty to cause its removal as soon as notified that it renders the street unsafe.—*Grant* v. *Stillwater*.—Filed May 18, 1889.—Minn.

MUNICIPAL CORPORATION.—LIMITATION OF INDEBTEDNESS.—BONDS HELD AGAINST CITY STOCK.—Where a municipal corporation is limited, by statute or its charter, as to indebtedness which it may incur, and the commissioners of the sinking fund hold a portion of the bonds as against city stock, the amount thus held must be considered as

deducted from the total indebtedness.—*Bank for Savings* v. *Grace, Mayor.*—Filed April 30, 1886.—N. Y.

MUNICIPAL CORPORATION.—IMPROVEMENT OF STREETS.—LIABILITY FOR DEFECTIVE WORK.—When provision has been made for the repair of streets, by the city authorities, and the work done and expense reported, approved and paid, it is too late to object to imperfections in the manner of doing the work. The approval and payment of the bills work a ratification and acceptance of the work.—*Davis* v. *Mayor of Jackson.*—Filed June 10, 1886.—Mich.

MUNICIPAL CORPORATIONS.—POWER TO IMPOSE A LICENSE TAX ON THE SALE OF LIQUORS.—Counties, cities or towns have power to impose a license tax for the sale of intoxicating liquors, and the fact that a city has levied and collected a tax does not estop the county, in which the city is located, from levying and collecting a tax of the same person.—*Ex. Parte Lawrence.*—Filed May 25, 1886.—Cal.

MUNICIPAL CORPORATION.—POWER OF COMMISSIONERS APPOINTED TO APPRAISE LAND TAKEN FOR SEWERAGE.—Commissioners appointed for the purpose of appraising land, taken for sewerage purposes, can award damages only for the taking of the land and not consequential damages resulting from the discharge from the sewer.—*Stewart* v. *Rutland.*—Filed June 10, 1886.—Vt.

MUNICIPAL CORPORATIONS.—THE LIMITS OF A NEW COPPORATION OVERLAPPING AN EXISTING CORPORATION.—Where a borough is incorporated by the court of quarter sessions, it cannot include within the bounds of the new borough, territory within the limits of a borough already incorporated. To do this requires an act of the legislature.—*Darby* v. *Sharon Hill.*—Filed March 1, 1886.—Pa.

MUNICIPAL CORPORATION.—ULTRA VIRES.—ORDINANCE GRANTING EXCLUSIVE PRIVILEGES.—Where a city council by ordinance granted to a gas company the exclusive privilege, for a period of two years, of occupying and laying gas pipes in the streets, and subsequently, before the expiration of the two years, granted to another gas company the same privilege, the latter company cannot be enjoined by the former from laying its pipes. The ordinance granting the exclusive privilege was *ultra vires* and void.—*Appeal of Meadville Fuel Gas Co.*—Filed May 31, 1889.—Pa.

NEGLIGENCE.—EVIDENCE.—STATEMENTS MADE BY THE ENGINEER IMMEDIATELY AFTER AN ACCIDENT.—In an action against a railway company for damages, for the killing of a child, the declarations of the engineer of the train, made a few minutes after the accident, are not admissible in evidence as part of the *res gestæ.*—*Durkee* v. *Cen. P Ry, Co.*—Filed May 18, 1886.—Cal.

NEW TRIAL.—REMITTITUR.—ACTIONABLE WORDS.—EXCESSIVE DAMAGES.—Where the court deems the damage assessed by a verdict excessive, it may, in its discretion, allow a remittitur to be filed or grant a new trial. Any words are actionable which necessarily must, or will cause pecuniary damage to the person of whom they are spoken. In an action on such words it is not necessary to allege special damages. Damages will be presumed.—*Pratt* v. *Pioneer Press Co.*—Filed May 28, 1886.—Minn.

OFFICIAL BOND.—SIGNED BY SURETIES ON CONDITION THAT OTHERS SIGN IT.—Where one or more parties sign an official bond, with the understanding that other signers will be obtained before the bond is delivered, and it is subsequently delivered without obtaining other signatures, those having signed are not thereby relieved of liability.—*Carroll County* v. *Ruggles.*—Filed June 21, 1886.—Iowa.

PARTITION.—.WHAT IMPROVEMENTS A COURT OF EQUITY WILL ORDER.—Where property is in the hands of a master, for the

purpose of partition, a court of equity will not order any improvements made beyond what is necessary for the protection and preservation of the property.—*Field* v. *Leiter*.—Filed June 12, 1886.—Ill.

PARTNERSHIP.—MONEY PAID BY ONE PARTNER FOR USE OF THE OTHER PARTNER.—NOT INCLUDED IN ACCOUNTING.—Where one partner loans money to his co-partner to be used in the firm business, or where one partner pays a firm obligation out of his own individual funds, he may maintain an action against his partner for the money loaned or paid for his use or on his account. Where money has thus been paid by one partner, for the benefit of the firm, the law will imply a request on the part of the delinquent partner.—*Bates* v. *Lane*.—Filed June 14, 1886.—Mich.

PATENTS.—LETTERS OBTAINED BY ONE OF THE MEMBERS OF A FIRM.—RIGHTS OF THE OTHER PARTNERS.—Where one of the members of a partnership, invents a new device and obtains letters patent therefor, the other members of the firm are not entitled to claim the invention as partnership property. If, however, the inventor induces the other members of the firm to contribute towards the expense of obtaining letters patent upon an agreement that they shall share in the benefits, such an agreement will be upheld notwithstanding the prohibition in Sec. 4898 Revised statutes.—*Burr* v. *De La Vergne*.—Filed June 1, 1886.—N. Y.

PAYMENT.—PROMISSORY NOTE.—TRANSFER OF CORPORATE STOCK.—Where the maker of a promissory note transfers to the holder of the note corporate stock, by a transfer which is in form absolute, it will be held to be a payment of the note, to the extent of the actual value of the stock at the time, and not merely a collateral security.—*Bartlett* v. *Gilbert*.—Filed June 5, 1886.—Maine.

PROMISSORY NOTE.—PLEADING.—STATUTE OF LIMITATIONS.—For the purposes of a demurrer, all the allegations of a complaint are taken as true. In an action upon a note alleged to be antedated, and a demurrer is interposed on the ground that it is barred by the statute of limitations, if the allegation that the note was antedated will save the action from being barred by statute the demurrer must be overruled.—*Collins* v. *Driscoll*.—Filed May 24, 1886.—Cal.

WILL.—ADVANCEMENTS.—PAROL EVIDENCE TO EXPLAIN INTENTION.—Where the intention as to advancements or redemption of legacies, can only be ascertained by surrounding circumstances, the facts and circumstances may be shown by parol testimony.—*Wallace* v. *Dubois*.—Filed March 10, 1886.—Md.

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The Chicago Law Journal.

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ACCORD AND SATISFACTION—COMPROMISE AND SETTLEMENT FOR LESS THAN THE DEBT.—A settlement and part-payment of an ascertained and over due debt, will not bar the recovery of the balance although it is accepted in full payment and a receipt to that effect be given. A receipt is only *prima facie* evidence of an admission recited in it.—*St. L. & F. S. & W. Ry. Co.* v. *Davis.*—Filed July 9, 1886.—Kans.

ADMISSIONS OF ATTORNEY IN CONTEMPT PROCEEDINGS—ASSIGNMENT FOR BENEFIT OF CREDITORS.—In proceedings for contempt to enforce a civil remedy, a solicitor has no authority to make admissions on behalf of his client. Defendant can not be bound by admissions except made part of the record. Where a husband has made an assignment for the benefit of creditors and property claimed by his wife is attached on the ground of fraud, she stands in the same attitude as any other third party.—*Scott* v. *Chambers.*—Filed July 21, 1886.—Mich.

APPEAL—ACTION ON APPEAL BOND WHERE THERE SHOULD HAVE BEEN A RECOGNIZANCE. In an action on a bail bond where a recognizance should have been taken instead of the bond, the obligors cannot defend against the bond on the ground of this irregularity, where the original action proceeded to final judgment without objection.—*Granger* v. *Parker.*—Filed June 30, 1886.—Mass.

ATTACHMENT—EQUITABLE ASSIGNMENT OF FUNDS.—An order drawn on a fund for a valuable consideration operates as an equitable assignment of the fund, although the garnishee had no notice of it before service. It is sufficient if he has notice before answering the garnishee summons.—*Lee* v. *Robinson.*—Filed July 17, 1886.—R. I.

ATTACHMENT—LIABILITY OF SHERIFF—PROOF OF DEBT—CONSIDERATION.—Where the sheriff justifies the taking of property under an attachment, which is claimed by another, he must show the relation of debtor and creditor between the plaintiff and defendant. Where the defendant's testimony tends to show that the claim was fraudulent, it is proper on cross-examination of the plaintiff to go into detail as to the nature of of his title, his knowledge of a previous transfer, the consideration and whether it has been fully paid or not.—*Homberger* v. *Brandenbnrg.*—Filed July 12, 1886.—Minn.

BANKRUPTCY.—BOND OF INDEMNITY.—LIABILITY.—Where a petition was filed in 1873 praying that defendant be declared a bankrupt, the plaintiff was required to give a bond conditioned that he save defendant harmless from danger in case he be not bankrupt. Held that the court had power

to require such bond and the plaintiff became liable when the bankruptcy proceedings were dismissed.—*Sonneborn* v. *Libbey.*—Filed June 15, 1886.—N. Y,

BOND AND CONTRACT OF AGENT—LIABILITY OF BONDSMEN.—Where a contract of agency is entered into, and concurrently a bond is executed, the bond and contract must be construed together. Bondsmen are not liable for default not contemplated in contract. After breach of the original contract, if the principal enters into a new contract with the agent, the sureties on the former are released.—*Weed S. M. Co.* v. *Winchell.*—Filed June 15, 1886.—Ind.

CARRIERS OF PASSENGERS—LIABILITY OF STREET RAILWAY COMPANY.—When a carrier has failed to convey a passenger safely and injury ensues, the burden of proving the absence of negligence is on the defendant. Where a passenger on a street car, while crossing a bridge, is walking on the floor of the car, and is injured by coming in contact with the bridge, the company is liable.—*B. & Y. T. Road* v. *Leonhardt.*—Filed June 24, 1886.—Md.

CHATTEL MORTGAGE—ON GROWING CROPS ON LAND OWNED BY MORTGAGOR—NOTICE.—Where the owner of the land on which crops are growing executes a chattel mortgage on the growing crops, the filing of the mortgage in the proper manner, in the town where the land lies, is full and ample notice to all persons of the mortgage and its conditions.—*Miller* v. *Chapel.*—Filed July 9, 1886.—Minn.

COMMON CARRIERS—RECEIVING GOODS FOR A DESTINATION BEYOND THE TERMINUS OF THEIR LINE—LIABILITY.—In the absence of any contract controling a common carrier receiving goods consigned to a point beyond their line, the carrier is not liable for damage after the goods are delivered to a connecting carrier. An agreement fixing throngh rates is not a contract to carry or safely deliver the goods beyond the terminus of the carrier's lines.—*Harris* v. *Grand Trunk Ry. Co.*—Filed July 17, 8886.—R. I.

CONTRACT—IMPLICATIONS OF LAW—MODIFICATION BY PAROL.—The implications of law are as much a part of a contract as are the express provisions of the same. The obligations imposed in a contract or implication of law cannot be modified by parol any more than can the express provisions. A certificate of deposit being given for money the law implies a promise to repay the money to the depositor on demand.—*Lang. Ex'r* v. *Straus.*—Filed June 19, 1886.—Ind.

CONSTITTIONAL LAW—IRREGULARITIES IN THE LEGISLATIVE JOURNAL DO NOT RENDER THE ACT VOID.—Where a bill is read first and second time on the same day in either house, the record on the journal should show an emergency, but in the absence of such record it will be presumed that an emergency existed. Where the journal knows that there were discrepancies in the bill, such discrepancies will not render the bill void as finally passed.—*Weyand* v. *Stover, Treasurer.*—Filed July 9, 1886.—Kans.

CONTRACT.—MODIFICATION OF BY ORAL TESTIMONY.—A written contract cannot be modified hy oral testimony of a contemporaneous agreement. A written contract may be modified by an oral agreement made subsequent to the written agreement. It is error for the court to refuse to charge that negotiations which took place at the time of the execution of the written contract were inadmissible.—*Gorse* v. *Peck.*—Filed June 1, 1886—N. Y.

COUNTY BRIDGES—POWER OF COMMISSIONERS TO UNITE WITH ADJOINING COUNTY IN BUILDING BRIDGES.—Where the county commissioners appropriated $800 to assist in building a bridge, in which the adjoining county in another state assisted, over a stream which formed the county line and also the state line, it is *held* that the commissioners had power to do so, although the appropriation would not complete the bridge.

By their contract with the adjoining county the bridge would be completed.—*In Re Appeal of K. C. Bridge & Iron Co.*—Filed July 9, 1886.—Kans.

CRIMINAL LAW—CHANGE OF VENUE—LIABILITY OF THE COUNTY WHERE THE ACTION WAS COMMENCED.—Where a criminal action is commenced and a change of venue is taken to another county, the court in which the case is tried may appoint an attorney to defend the prisoner who is unable to employ counsel, and the county where the crime was committed is liable for the costs, including a reasonable fee for the attorney so appointed by the court.—*Allen Co.* v. *Miller, Auditor.*—Filed June 15, 1886.—Ind.

CRIMINAL LAW—FALSE TESTIMONY—INSTRUCTION AS TO THE EFFECT OF.—Where defendant was on trial for arson and a member of his family testified in his behalf and the presumption arising from the testimony indicated that it was false, the court charged that if the jury determined the testimony was false, and that the defendant was privy to the false story, it might be construed as pointing to his guilt. *Held* not error.—*Pilger* v. *Commonwealth.*—Filed March 29, 1886.—Pa.

CRIMINAL LAW—ONCE IN JEOPARDY—INSTRUCTION.—Where a defendant is put on trial for a deadly assault, and after examining witnesses the judge instructs the jury to acquit and they do so, he cannot be again put on trial for the same offense, although the judge erred in his instructions.—*People* v. *Horn.*—Filed May 31, 1886.—Cal.

CRIMINAL LAW—JURY TAKING STATUTES TO THEIR ROOM—WAIVER OF ERROR.—It is not error to allow the jury in a criminal case to take an annotated copy of the statutes with them to their room. Errors not excepted to are considered as waived.—*Mul. read* v. *State.*—Filed June 15, 1886.—Ind.

CRIMINAL LAW—PROOF OF GOOD CHARACTER—POSSESSION OF STOLEN PROPERTY.—In a criminal action proof of the previous good character of the defendant may be produced for the purpose of casting a doubt upon his guilt, but proof of previous good character is not sufficient to overcome the presumption arising from finding of stolen goods in the possession of defendant.—*Wagner* v. *State.*—Filed June 18, 1886.—Ind.

DEED—GENERAL DESCRIPTION—"ALL THE LAND BY ME OWNED."—Where, in a deed, there is no particular description, but a description in general terms, "all the land by me owned," it will be held to mean all the land now owned by the grantor, or all the land owned by him and not heretofore conveyed.—*Fitzgerald* v. *Libby.*—Filed July 2, 1886—Mass.

DEED—DELIVERY OF, ESSENTIAL TO ITS VALIDITY.—The delivery of a deed is absolutely necessary to give it effect. Where the grantee has possession of the deed, delivery will be presumed, but that presumption may be rebutted by showing that it never was intentionally delivered by the grantor.—*Dwinell* v. *Bliss.*—Filed July 31, 1886.—Vt.

DESTRUCTION OF GROWING CROPS—MEASURE OF DAMAGE—EVIDENCE OF VALUE.—In an action for damage to growing crops the opinion of competent witnesses, as to the extent of the injury, and the value of the crop, at the time of the injury, may be admitted. It may also be shown what is the ordinary yield of like crops under similar conditions. The measure of damage is compensation for the value thereof in the condition they were in at the time of the injury.—*Lommeland* v. *St. P. M. & M. Ry. Co.*—Filed July 12, 1886.—Minn.

DIVORCE—SETTING ASIDE DECREE—FRAUD OF AN ATTORNEY.—Where an action is commenced by a defendant in a divorce proceeding, within six months after decree, for the purpose of vacating the decree on the ground of fraud, and in such case judgment is had against defendant, proceedings may be commenced within one year to re-

view the case in the supreme court. *Malla fides* on the part of an attorney is sufficient ground for the vacation of a decree.—*Haverty* v. *Haverty*.—Filed July 9, 1886.—Kan.

DIVORCE PROCEEDINGS—RULE OF PLEADING—DISMISSAL BY COUNTY COURT.—The common law rules of pleading do not apply in divorce proceedings and a former adjudication may be shown in defense, without special plea. The county court may in its discretion dismiss an action for divorce without predjudice and such dismissal is no bar to another action.—*Burton* v. *Burton*.—Filed July 24, 1886.—Vt.

EQUITY—ONE NOT A PARTY TO AN ACTION CANNOT BE AFFECTED BY THE JUDGMENT.—Land sold under a judgment obtained, to which the real owner was not a party, does hot cast a cloud upon the owner's title, and the owner cannot obtain an injunction to restrain such a sale on the ground that he fears it may affect his title.—*Archbishop* v. *Shipman*.—Filed May 25, 1886.—Cal.

EXECUTION SALE—CONFIRMATION OF—IRREGULARTIES CURED.—The confirmation of a sheriff's sale cures any irregularity which appeared in the proceedings,but such as fraudulent combinations to prevent a fair sale, or matters relating to the ownership, are not cured or determined conclusively by confirmation.—*Central Bank* v. *Huntoon*.—Filed July 9, 7886.—Kans.

EXEMPTIONS—ARTICLES EXEMPT BY STATUTE—SELECTION BY DEBTOR.—Where property of a certain class is specifically exempt from execution to a certain amount, and the debtor does not have more than is allowed by the statute, it is not necessary that he make a selection of articles claimed by him. The statute chooses for him.—*Howard* v. *Rugland*.—Filed July 9, 1886.—Minn.

EXECUTORS AND ADMINISTRATORS—COMPENSATION OF—COMMISSION ON LANDS IN LITIGATION.—Executors and administrators are entitled to commission on the value of the estate accounted for by them, but where lands claimed by the decedant were in litigation at the time of his death and the executors follow up the suit, and final judgment goes against them, they are not entitled to commission on the value of the land.—*In Re Estate of Ricard*.—Filed June 26, 1886.—Cal.

EXECUTORS AND ADMINISTRATORS.—JUDGMENT AGAINST.—LIABILITY WHEN ESTATE IS INSOLVENT.—A creditor does not gain any advantage by taking judgment against the administrator, nor does it give him any preference over other creditors. The administrator, although he allows judgment to be taken by default, is not thereby liable, nor does his bondsman become liable beyond the limits of the assets of the estate.—*Fuller, Judge* v. *Connelly*.—Filed July 3, 1886.—Mass.

EXECUTORS AND ADMINISTRATORS—DUTIES OF—WHEN ENTITLED TO SUBROGATION.—The duties of an administrator *pendente lite* end when the court determines who is entitled to further administer. If he has paid debts and expenses of the estate beyond the amount of personal property, he is entitled to subrogation to the rights of the creditors against the lands of the estate and may subject the lands to the payment of his claim, although in the hands of the heir or devisee.—*Wooley* v. *Pemberton*.—Filed July 19, 1886.—N. J.

EXECUTORS AND ADMINISTRATORS—MONEY PAID ON BOND OF LEGATEE—SET-OFF.—Where a testator is surety for one of the beneficiaries under his will, and the executor is compelled to respond on the testator's bond as surety, the amount so paid by the executor may be set off as an advancement to the legatee when distribution is made.—*Stief* v. *Collins*.—Filed March 10, 1886.—Md.

FIRE INSURANCE—INCREASING RISK BY ERECTING A BUILDING CONTIGUOUS.—Where a policy of fire insurance contained a clause voiding the policy if a building contiguous

were erected without the consent of the company, and a building was erected 25 feet distant from the one insured. *Held* that the building so erected was not contiguous within the meaning of the policy and did not vitiate the policy.—*Olson* v. *St. P. F. & M. Ins. Co.*—Filed July 14, 1886.—Minn.

FLOATABLE STREAM—RIGHTS OF USE—STORAGE OF LOGS WHICH OBSTRUCTS THE USE BY OTHERS.—A floatable stream is a common highway, and the storage of logs by one in such manner as to obstruct the use of the stream by others, is an unreasonable use of it, and the wrong-doer is liable for damages caused thereby.—*McPheters* v. *M. R. Log-Driving Co.*—Filed June 30, 1886.—Me.

FORCIBLE ENTRY AND DETAINER—ON WHAT GROUNDS AN ACTION MAY BE MAINTAINED.—In order to maintain an action of forcible entry and detainer, the plaintiff must show that he was in actual peacable possession and that defendant by force, threats or menacing conduct tnrned plaintiff out and took possession. The possession of plaintiff must have been actual, peacable and exclusive.—*Castro* v. *Tewksbury.*—Filed May 24, 1886.—Cal.

FRAUDULENT CONVEYANCE—RIGHTS OF BONA FIDE PURCHASER.—Where one is insolvent and makes a sale of all his goods to another, for a valuable consideration, who has no notice of the fraudulent intent of the seller, the purchaser will be protected if he has paid for the goods. If the goods have not been pald for or paid for in part, he will be protected only to the extent to which he has paid for the goods at the time of notice. *Bush* v. *Collins.*—Filed July 9, 1886.—Kan.

FRAUDULENT REPRESENTATIONS—SALE OF CORPORATE STOCK—LIABILITY.—One who, in the sale of corporate stock, falsely represents the assets of the corporation, is liable therefor, whether the benefits resulting therefrom accrue to him individually or to the corporation. In selling the corporate shares of a company's stock, false representation as to the value of the shares is the same in effect as selling in like manner any property belonging to the company.—*Schwenk* v. *Naylor.*—Filed June 1, 1886.—N. Y.

JURY TRIAL—WHEN DEMAND MUST BE MADE—POLICY OF THE LAW.—It is the general policy of the state legislation that cases, both at law and in equity, should be tried to the court without a jury. Where the defendant has set down a cause for hearing before a single justice and, two years afterwards, makes application for an issue to be tried before a jury, and where the case has been set for hearing 9 months previously, his application for a jury trial is too late. —*Dole* v. *Wooldredge.*—Filed June 30, 1886.—Mass.

LANDLORD AND TENANT—NUISANCE—LIABILITY OF LANDLORD.—Where a building is leased and in possession of the lessee, the landlord is not liable for the consequences of a nuisance in connection therewith, unless the nuisance existed at the time of executing the lease, or unless the building was in such condition at the time that the nuisance naturally and necessarily resulted therefrom.—*Kalis* v. *Shattuck.*—Filed May 15, 1886,—Cal.

LIFE INSURANCE.—MUTUAL BENEFIT ASSOCIATION.—TO WHOM BENEFITS MAY BE PAYABLE.—Where the by-laws of a mutual benefit association provide that the fund shall be payable to such person as the member shall designate, within the limits of heirship or members of his family, where a member, in his application, designated his wife as the beneficiary, and subsequently made an assignment of the fund to his mother, it is held that the assignment is void and of no effect, and that his wife was entitled to this fund notwithstanding the assignment.—*Elsey* v. *O. F. M. R. Association.*—Filed July 3, 1886.—Mass.

MALICIOUS PROSECUTION—WEALTH AND INFLUENCE OF DEFENDANT—NEW TRIAL.—In an action for malicious prosecution the

wealth of defendant may be shown as bearing upon the measure of punative damage. His influence in the community cannot be shown as it involves the opinion of the witness. Newly discovered evidence tending only to contradict testimony given, is not ground for a new trial.—*Peck* v. *Small.*—Filed July 20, 1886.—Minn.

MASTER AND SERVANT—NEGLIGENCE OF FELLOW SERVANT—DIFFERENT GRADES OF SERVICE.—A master is not liable for injury to a servant arising in the ordinary course of dnty, by reason of the negligence of a fellow servant, unless it is shown that the master is negligent in retaining such servant is his employ. The fact that the one injured occupies a station or a grade inferior to the other does not enlarge the master's liability. —*Baltimore El. Co.* v. *Neal.*—Filed June 23, 1886.—Md.

MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO SERVANT.—Where a master is personally in charge of his employes and directs the servant to perform certain work, if the danger in its performance is not apparent or not known to the servant, and he exercises due care in its performance, the master is liable for any injury to a employe which he may receive. If the employe is under direction of a member of a firm, the firm is liable for the injury.—*Haley* v. *Case.*—Filed July 3, 1886.—Mass.

MASTER AND SERVANT—CO-EMPLOYE—THE COURT WILL TAKE JUDICIAL NOTICE OF THE COMMON LAW.—A section foreman on a railway track is not a co laborer or fellow-servant with an engineer in charge of a locomotive. The court will take judicial notice of the common law of the state, as modified by statute, and the common law of other states will be presumed to be the same as that of Kansas until the contrary is shown. —*St. L & S. F. Ry. Co.* v. *Weaver.*—Filed July 8, 1886.—Kans.

MORTGAGE—CERTIFICATE OF FORECLOSURE SALE—TAX CERTIFICATE—BURDEN OF PROOF.—The certificate of sale by the sheriff cannot be presented as evidence of the regularity of the proceedings, unless it conform strictly to the statute. Where a party asserts title in fee by virtue of a tax certificate, the burden of proof is on him to show that the notice required in such case has been duly served.—*Nelson* v. *Central Land Co.*—Fileb July 12, 1886.—Minn.

MUNICIPAL CORPORATION—RECOVERY OF SALARY BY AN EMPLOYE UNJUSTLY DISCHARGED.—When an employe, under contract of service for a specific term, has been discharged unjustly before the expiration of the term, in an action to recover his wages for the balance of the term, a deduction may be made of the amount he has earned by other service during the time. This rule does not apply in the case of a discharged employe for a municipal corporation.—*Fitzsimmons* v. *City of Brooklyn.*—Filed June 1, 1886.—N. Y.

MUNICIPAL CORPORATIONS — RAILWAY COMPANY BOUND TO KEEP STREET IN REPAIR —EVIDENCE.—Where a railway company had covenanted to keep the street between the tracks in repair, and failing to do so the commissioner of public works ordered the repairs made and charged the company therewith, *held* that it was liable and the time-book of the foreman was competent evidence as to the time and cost of the repairs.—*City of New York* v. *Second Ave. Ry. Co.*—Filed June 22, 1886.—N. Y.

MURDER OF AN OFFICER—ADMISSION OF WARRANT—INSTRUCTIONS.—In the trial for the killing of a sheriff, about to arrest the defendant, the warrant may be put in evidence although at the time of the killing it was held by the sheriff's companion. The wrongful admission of testimony will not be ground for a new trial where its admission does not prejudice the defendant's case. Where the court instructs the jury that "mental unsoundness must be the result of a disease, and not the result of his having al-

lowed his passions to run until they have become uncontrollable," it is held to be correct.—*People* v. *Durfee.*—Filed July 21, 1886.—Mich.

NEGLIGENCE.—WILLFUL INJURY.—PLEADING.—In an action for damages for personal injury the complianant must aver that he is free from contributory negligence, or in the absence of such averment must show that injury was caused willfully. If the facts stated do not show a willful injury the complaint is had on demurrer.—*L. N. A.* & *C., Ry. Co.* v. *Bryan.*—Filed June 16, 1886.—Ind.

NEGLIGENCE.—PERSONAL INJURIES BY ONE ON A RAILWAY TRACK AS A TRESPASSER.—One beiug on a railway track as a trespasser, and being injured by a passing train, cannot recover damage therefor unless the employer of the company recklessly or willfully committed the injury. One going upon the railway track, at any other place than a public crossing is a trespasser. A pathway leading to the track but not extending from one highway to another, does not constitute a public crossing.—*Wright* v. *B.* & *A., Ry. Co.*—Filed July 3, 1886.—Mass.

NEGLIGENCE—RAILWAY INJURY—CONTRIBUTORY NEGLIGENCE A QUESTION FOR THE JURY.—Where a party on the railway track had his foot so fastened that he could not escape the danger of an approaching train, and was injured, in an action for damages the question of contributory negligence may properly be submitted to a jury. It is in the discretion of the court to allow the counsel to supplement their argument by reading from the reports.—*B.* & *O. Ry. Co.* v. *Kean.*—Filed June 22, 1886.—Md.

NEGLIGENCE—DRIVING ACROSS THE RAILWAY TRACK WHILE IN PROCESS OF REPAIR.—A party being deaf, undertook to drive across a railway track at a point where the track was being repaired. The foreman requested him to wait, but not hearing, he drove on and a workman took hold of his horse and led him across the track. After crossing, the workman let go, and the horse ran away and was injured. *Held* that the question of negligence of the company and of contributory negligence by the plaintiff was a question for the jury. *Held* also that the plaintiff had reason from the act of the workman, to believe the crossing safe.—*Rembe* v. *N. Y. O.* & *W. Ry. Co.*—Filed June 8, 1886.—N. Y.

PARDONING POWER—VESTED IN THE GOVERNOR—RECAPTURE OF A CONVICT WITHOUT WARRANT.—The power of executive pardon vested in the governor is limited only by treason and impeachment. The law authorizing the summary recaption and detention of a pardoned convict, for a violation of his pardon, is *held* unconstitutional. For such violations of the conditions of his pardon he must be proceeded with as if charged with any other crime.—*People* v. *Moore.*—Filed July 21, 1886.—Mich.

PATENT RIGHTS—WHEN A CONSIGNEE SANCTIONS USE OF COMPETING MACHINE—ROYALTY.—Where the patentee of an invention assigns the right to manufacture the improved machine, the assignee agreeing to pay a certain royalty, if he sanctions the manufacture and sale of a competing machine, which is an infringing machine, such machines shall be considered as manufactured by the assignee.—*Porter* v. *S. M. Match Co.*—Filed July 1, 2886.—Mass.

PRINCIPAL AND AGENT—GOODS SOLD BY AN AGENT UNDER THE AUTHORIZED PRICE.—Where an agent authorized to sell goods at a fixed price, without any authority, sells the goods at a price below what he is authorized to sell at, and the buyer knows the price at which the agent is authorized to sell, the principal may recover the full price of the goods, notwithstanding the agent's agreement.—*Rogers* v. *Holden.*—Filed July 31, 1886.—Mass.

PRINCIPAL AND SURETY—DISCHARGE OF SURETY BY LACHES—WHAT IS UNREASONABLE DELAY.—A party purchases goods and

gives a note in payment of them signed by guarantors. At maturity the note is protested and the holder demands payment of the surety on October 12. The surety on October 17th, notifies the holder that the principal is able to pay the note and requests that an action be commenced to enforce payment. No action is commenced until January 25th, three months after the notice, when the maker was found to be insolvent. *Held* that the delay was sufficient to discharge the surety.—*M. S. Plate Co.* v. *Flory.*—Filed June 29, 1886.—Ohio.

PROMISSORY NOTE—HOLDER FOR VALUE—GUARANTY.—When a promissory note made by a railroad company, made payable to the order of its treasurer, and on the back of the note is written a guarantee, "We hereby guarantee the payment of the within note," signed by guarantors. *Held* that the guaranty runs to, and the guarantors are liable to the first holder of the note.—*Jones* v. *B. & M. V. Ry. Co.*—Filed June 30, 1886.—Mass.

PROMISSORY NOTES—WHEN CONSIDERED A SETTLEMENT OF ACCOUNTS.—Plaintiff's husband had been defendant's partner, and after the death of plaintiff's husband defendant received money and accounts belonging to deceased and also borrowed money of plaintiff. This action was brought for an accounting and defendant claimed to have given his note or notes in settlement. *Held* that the referee did not err in finding that said notes did not amount to a settlement and in allowing such settlement to be opened without any charge of fraud.—*Eno* v. *Diefendorf.*—Filed June 8, 1886.—N. Y.

PROMISSORY NOTE—RENEWAL OF NOTE—CONSIDERATION WHERE THE INDORSER HAS BEEN DISCHARGED.—Where a note has been given and guaranteed by a third party, and by act of payee the surety has been discharged, and subsequently the note is renewed and the surety knowing all the material facts, but not knowing that by operation of law he was discharged, signs the new note, the giving up of the old note is a sufficient consideration to bind the surety on the new.—*Churchill* v. *Bradley.*—Filed July 19, 1886.—Vt.

PROMISSORY NOTE—ACTION ON—NONSUIT FOR WANT OF PROOF OF INDORSEMENT.—In an action on a promissory note, the plaintiff introduced the note in evidence and then rested. The defendant moved for a nonsuit on the ground that there was no proof of indorsement. The plaintiff asked leave to open the case and offer proof of indorsement, which was declined and a nonsuit entered. *Held* error. The plaintiff should have been allowed to open the case.—*Low* v. *Warden.*—Filed June 17, 1886.—Cal.

RAILWAY CROSSINGS—LOCATION OF—APPEAL FROM THE ORDER OF COURT.—In appointing commissioners to locate a railway crossing, the court is not confined to the precise location indicated in the petition. After the order is entered and the petitioning corporation having filed the required bond, the progress of its work in making the crossing cannot be stayed by an appeal from the order.—*St. P. M. & M. Ry. Co.* v. *Dist. Court.*—Filed July 17, 1886.—Minn.

RAILWAY COMPANY.—INJURY TO PERSON UNLAWFULLY UPON THE TRACK—WILLFUL WRONG—One unlawfully upon a railway track being injured cannot recover damages for the injury unless the injury was caused willfully. The allegation in the complaint that the injury was caused by "gross negligence" or by "recklessness" cannot be construed to be willfulness.—*C. & E. I. Ry. Co.* v. *Hedges, Admix.*—Filed April 10, 1886.—Ind.

RAILWAY COMPANY—DELAY IN DELIVERY OF GOODS CAUSED BY STRIKES—RAILWAY COMPANY NOT LIABLE—A common carrier cannot be charged with damage for delay in delivery of goods caused by accident or misfortune over which it has no control. Delay caused by a strike of the employes on a railway is such a misfortune as to excuse delay when the company has done all it could, but

has been prevented from running trains by mob violence.—*Greismer* v. *L. & M. S. Ry. Co.*—Filed June 23, 1886.—N. Y.

RAILWAY COMPANIES—NECESSARY CARE OF PASSENGERS AT STATIONS—CONDITION OF STATION.—A railway company is bound to keep their stations in safe and good repair, where passengers are invited to go. A passenger having alighted on the platform, which is insufficiently lighted, comes in contact with a baggage truck and is thrown upon the track and injured. *Held* that it is a question for the jury as to the negligence of the company.—*Keefe* v. *B. & A. Ry. Co.*—Filed July 3, 1886.—Mass.

SALE OF SPECIFIC CHATTELS—THE PURPOSE FOR WHICH THEY ARE PURCHASED NOT SPECIFIED.—Where specific chattels are sold and the purpose for which they are purchased is not known to the vendor, there is no implied warranty that the goods are suited to any particular purpose. Where there is a written agreement, parol evidence cannot be submitted to show that the writing does not embrace the whole of the agreement between the parties.—*Warren Glass Works Co.* v. *Keystone Coal Co.*—Filed June 24, 1886.—Ind.

SALE OF SPECIFIC CHATTELS—IMPLIED WARRANTY—RECOUPMENT.—Where chattels are sold for a specific purpose, which is understood by both vendor and vendee, there is an implied warranty that they shall be reasonably fit for the purpose for which they were purchased. Upon a breach of such warranty the buyer may recoup the damages without having returned or offered to return the goods.—*Best* v. *Flint.*—Filed July 19, 1886.—Vt.

SALE AND ACCEPTANCE BY VENDEE—TRIAL OF MACHINERY—ACTION FOR REFUSAL TO ACCEPT.—Where a village agreed to purchase a steam fire engine and the contract provides for the payment of the first instalment when the property is accepted, and at the request of the vendee the vendor sends an employee to assist at the trial of the engine. *Held* that the acceptance was to be after trial and, as the village after trial refused to accept, it could not be held on the contract. An action for recovery, if recovery could be had, must be for breach of contract and not *assumpsit.*—*Mansfield Machine Works* v. *Lowell.*—Filed July 21, 1886.—Mich.

SALE—PARTNER OFFERING "TO GIVE OR TAKE"—ACCEPTANCE.—Where one of two partners, desiring to wind up the partnership, makes an offer to the other to either sell or buy at a certain price, and adds that the party purchasing shall give security for payment of the partnership debts, and the other accepts "to sell on the terms mentioned." *Held* not a complete sale.—*Gates* v. *Nelles.*—Filed July 15, 1886.—Mich.

SCHOOL LANDS—GRANT MADE AND ACCEPTED BY THE STATE CANNOT BE WITHDRAWN.—Where lands are granted by the general government to the state, an immediate seizin is vested in the grantee, and cannot be recalled, and a subsequent grant of the same land by the government is void. A public officer cannot recite and certify facts not contained in the record.—*Doggett* v. *Bonewitz.*—Filed June 22, 1886.—Ind.

SCHOOL TRUSTEES—LIMITED AUTHORITY—CONTRACT FOR SCHOOL SUPPLIES.—In an action to recover for goods sold to the trustee for the use of the schools of the township the declaration must allege that the articles sold were suitable for the use of the schools and that they were delivered and accepted by the township.—*Bloomington Tp.* v. *Nat. Furniture Co.*—Filed June 16, 1886.—Ind.

SHERIFF—RIGHT TO SUPPLY PRISONERS WITH FOOD, BUT NOT WITH MEDICAL ATTENDANCE.—It is the duty of the sheriff to supply prisoners in his custody with board, but he cannot bind the county for fuel, bedding, menial attendance or medical attendance unless ordered by the board of county commissioners.—*Hendricks* v. *Board of Commissioners.*—Filed July 9, 1886.—Kans.

SLANDER—REPRESENTATIONS DISPARAGING TITLE TO PROPERTY—DAMAGES.—Where declarations disparaging one's title to property are followed by special damage to the owner, as a natural consequence, such statements are actionable. In such action special damages is the gist of the action.—*Wilson* v. *Dubois.*—Filed July 20, 1886 —Minn.

SPECIFIC PERFORMANCE—TRESPASS BY A SUB-CONTRACTOR—DISCRETION OF THE COURT —Where a party entered into a contract to keep open a certain road, where it appeared that it would be extremely difficult to perform the contract, *held* that the court in its discretion might relieve defendant from specific performance and leave plaintiff to his remedy for a breach of the contract. Where a sub-contractor trespassed upon plaintiff's land unnecessarily in the execution of the contract, *held* that the contractor was not liable for the tresspass.—*Murtfeldt* v. *N. Y. & W. S. & B. Ry. Co.*—Filed June 1, 1886.—N. Y.

STATUTE OF FRAUDS—CONTEMPORANEOUS GUARANTY—CONSIDERATION.—Where a contract of guaranty is entered into at the same time as the principal contract, the consideration in the principal contract is sufficient to support the contract of guaranty and no other consideration is necessary. The principle is here applied to a guaranty in a lease. *Highland* v. *Dresser.*—Filed July 1, 1886. —Minn.

SURROGATE COURT—OPENING FINAL DECREE FOR THE CORRECTION OF A MISUNDERSTANDING—Where an executor filed his final account in Sept., 1874, and in 1883 made application to have his account reopened for the pnrpose of correcting an alleged mistake, which was denied by the surrogate. *Held* no error, the matter having arisen through an honest misunderstanding.—*In Re Estate of Deyo.*—Filed June 8, 1886.—N. Y.

SUBROGATION—PAYMENT AT THE REQUEST OF DEBTOR.—Where a stranger pays the debt of another without being requested or compelled to do so, he cannot be subrogated to the rights of the creditor, but where one pays a mortgage upon the promise of the debtor that a new mortgage will be made to him, he has the right to subrogation upon a failure to execute the mortgage as agreed. —*Crippen* v. *Chappel.*—Filed July 9, 1886. —Kan.

TAX SALE—SEVERAL LOTS SOLD AS ONE TRACT—REDEMPTION.—Where two several lots were owned by the same party and assessed separately, but sold for taxes as one tract, the owner cannot enjoin the issue of a tax deed, or redeem from the sale, although irregularly made, without paying the taxes due, together with the penalty on the same. —*Miller* v. *Madden.*—Filed July 9, 1886. —Kan.

TENANT FOR LIFE—DOWER—DEED BY HUSBAND, THE WIFE NOT JOINING.—Tenants for life in possession are bound to pay the taxes or annual charges upon the estate. One holding by a conveyance by a husband in which his wife did not join, is tenant *per antre vie* as to the wife, and she is entitled to dower free from taxes which the husband's grantee may have paid.—*Jonas* v. *Hunt.*—Filed Nov. 1885.—N. J.

TENANTS IN COMMON—IMPROVEMENTS MADE BY ONE TENANT—LAND LIABLE.—Where land was purchased by two brothers for the use of their mother, and the conveyance made to one only, in his own name, it is *held* that they are tenants in common and improvements made by the one in possession are chargable upon the land.—*Jenkins* v. *Jenkins.*—Filed July 6, 1886.—N. J.

TROVER AND CONVERSION—RETAINING PROPERTY PLEDGED—DISCHARGE OF LIEN. —Before action of trover and conversion can be maintained for the recovery of property pledged the lien created by the pledge must be discharged by payment or by tender of payment or otherwise. In an action to recover collateral thus pledged if the declaration does not allege a conversion it is bad on demurrer.—*Cumnock* v. *Inst. for Savings.*—Filed July 3, 1886.—Mass.

TRIAL—VERDICT WHERE ONE PARAGRAPH OF COMPLAINT IS BAD—NEGLIGENCE—WILLFUL INJURY.—A verdict, based upon a complaint one paragraph of which is bad, will be reversed. In an action for damages, resulting from negligence, where willful negligence is charged upon defendant, the complaint must aver entire freedom from negligence on part of the plaintiff. It must be shown that the injury was the natural or probable consequence of willful negligence.—*B. R. and S. Y. Co.* v. *Mann.*—Filed June 17, 1886.—Ind.

TRUSTEE—NEGLIGENCE—CONVEYANCE TO INDORSEE OF PROMISSORY NOTE.—Where the maker of a promissory note conveyed certain property to his indorser with the understanding that the property should be sold and the note paid out of the proceeds and then the surplus returned to the maker, the property selling for less than the amount of the note. *Held* that the maker is liable for the balance, and he cannot avoid liability by charging negligence in the sale of the property.—*Smith* v. *Briscoe.*—Filed June 29, 1886.—Md.

TRUST—FORECLOSURE OF MORTGAGE WITH AN AGREEMENT BY THE PURCHASER TO RECONVEY.—Where an arrangement was made whereby the title to certain property should be perfected by a foreclosure of a mortgage, the plaintiff to be the purchaser, under an agreement to reconvey the property at any time within one year, upon being paid the purchase money and all expenses, the purchaser cannot be required to account for the rents and the profits during the year.—*Belter* v. *Lyon.*—Filed June 8, 1886.—N. Y.

VENDOR AND VENDEE—MISDESCRIPTION—RIGHTS OF ONE HOLDING UNDER A TAX DEED.—Where a debtor made an assignment for the benefit of creditors in another state and owning lots in Topeka, which were misdescribed in the deeds of assignment, one who had purchased the lots at a tax sale having no notice of the assignment, may be compelled to surrender the same to the assignee upon payment of the moneys paid by him for the same, and subject the lots to the claims of the creditors.—*Heutig* v. *Redden.*—Filed Jufy 9, 1886,--Kans.

WATER COURSES—LIABILITY OF THE OWNER OF A DOCK FOR DEFECT.—Where the bottom where boats land at a dock is defective, and the defect not known to the master of a vessel, the owner of the dock is liable for the damage done thereby to the vessel. The owner of the dock should have some one to direct vessels where to moor.—*Barber* v. *Abendroth.*—Filed June 1, 1886.—N. Y.

WILL—DEVISE OF REAL ESTATE—NOT LIABLE FOR DEBTS AFTER THREE YEARS.—Where a testator bequeathed all his estate, real and personal, to his wife subject to the payment of his debts, and four years after the death of the testator a claim was duly allowed against the estate. *Held* that as there was no personal property out of which it could be paid, the real estate could not be sold for that purpose. The lien against the real estate being limited to three years.—*Gates* v. *Schugrue.*—Filed July 9, 1886.—Minn.

WILL—BEQUEST TO CHILDREN AND REMAINDER OVER TO GRANDCHILDREN—THE LATTER TAKES PER CAPITA.—A testator made certain bequests to his sons with a provision that if his sons or either of them die without issue, then the estate shall go "equally to all my grandchildren that may be living." *Held* the words "that may be living," meant living at the time of the death of either of his sons, and that the grandchildren should take *per capita* and not per *stirpes.*—*Morrill, Trustee* v. *Phillips.*—Filed July 3, 1886.—Mass.

WITNESS—LEADING QUESTIONS ON DIRECT EXAMINATION—DISCRETION OF COURT.—When on direct examination the witness is found to be adverse to the party calling him, leading questions may be asked. A witness testifying in his own behalf may be questioned as to his antecedents, in the discretion of the court.—*McBride* v. *Wallace.*—Filed July 15, 1886.—Mich.

WITNESSES—TESTIMONY OF PARTIES—REFRESHING MEMORY BY A WRITING.—A corporation being party to a suit and producing its officers or agents as witnesses, the opposing party in the suit may be examined as a witness. The corporation under such circumstances cannot be said to be under disability.—*N. H. Ry. Co.* v. *May.*—Filed July 19, 1886.—N. J.

WITNESS—REFUSAL TO BE SWORN—CONTEMPT.—A witness cannot refuse to be sworn on the ground that to answer questions would subject him to punishment for a felony. Such refusal is contempt of court. The privilege only exists after he is sworn, if it exists at all, when a question is put to him.—*Ex. Parte, Stice.*—Filed June 24, 1886.—Cal.

WITNESS—DEATH OF PARTY—SUBSTITUTION OF NEW FOR AN OLD NOTE.—The real substance and not the techinal form of the issue must determine whether one of the parties to a contract is a competent witness or not, where the other party is dead. The substitution of a new note instead of an old one secured by a mortgage does not discharge the mortgagee unless it appears that such was the intention.—*Richardson* v. *Davis, Adm'r.*—Filed July 24, 1886.—Vt.

Finlon v. *Clark.*

Filed May 15, 1886.—Ill.

(In ejectment proceedings the defendant cannot offer evidence in avoidance on the ground that the deed is an equitable mortgage. His remedy is by injunction.)

W. St. L. and P. Ry. Co. v. *Peterson.*

Filed June 8, 1886.—Ill.

(Where the defendant in error pleads a former appeal in the same case it is a complete bar. An issue decided once on appeal cannot be reviewed.)

City of Sterling v. *Galt.*

Filed May 15, 1886.—Ill.

(Where local improvement is ordered by a city council, the gross amount of the cost must be determined by commissioners appointed for that purpose, where the expense is to be paid by local taxation the ordinance must fix the amount.)

Hoar v. *Merritt.*

Filed July 15, 1886.—Mich.

(An employer having furnished suitable materials and employed competent carpenters to construct a scaffold, which is used by them in putting up cornice, and is subsequently used by painters in painting the cornice, and while the painters are at work it falls and the painters are injured. *Held* that the carpenters and painters are fellow-workmen and the employer is not liable.)

House v. *Eisenlord. Adm'r.*

Filed June 1, 1886.—N. Y.

(A decree of foreclosure of a mortgage for non-payment of a portion of one instalment of interest, where the mortgagor orally agreed that the mortgagee might pay at his convenience, is in the sound discretion of a court of equity.)

Reilley v. *D. & H. Canal Co.*

Filed June 1, 1886.—N. Y.

(The supreme court has no power to reverse judgment of lower court on the ground of excessive damages.)

People v. *Cruger,*

Filed June 1, 1886.—N. Y.

(Where property is delivered to a party who is authorized to pledge it for a loan of money, the bailor cannot be convicted of stealing the property.)

Larned v. *Briscoe,*

Filed July 15, 1886.—Mich.

(Where the board of public works change the grade of streets without the authority of the council. they are individually liable for the damage caused,)

Howe v. *Frazer.*

Filed May 16, 1886.—Ill.

(Where a defendant pleads a set-off, it is necessary that he file a copy of the instru-

ment or items relied on, but this requirement may be waived by the plaintiff.)

Hutchinson v. *Ayres.*
Filed June 12, 1886.—Ill.

(In a bill for relief by a *cestui que trust* all co-trustees must be made parties. If all are not joined it may be necessary to review the whole matter.)

Mason v. *Alexander.*
Filed June 1, 1886.—Ohio.

(An action to enforce the individual liability of the stockholders in a corporation may be brought in the county where the stockholders reside, and the stockholders living in another county, who are summoned and appear, are within the jurisdiction of the court.)

People v. *Gardner.*
Filed July 1, 1886.—Mich.

(A defendant in an action for a felony cannot plead a former trial or once in jeopardy, where he has been formerly put upon trial for the same offense and by his own motion or with his consent, the jury was discharged.)

Murray v. *Beard.*
Filed June 1, 1886.—N. Y.

(Where a party engages as agent for several parties to sell timbers for them on commission and puts in a bid for a lot where proposals are asked for, and one of the principals not knowing that his agent is bidding, puts in a bid and is successful, the agent cannot obtain his commission on the sale.)

McLean v. *Hess.*
Filed May 25, 1886.—Ind.

(Property conveyed to a wife under a fraudulent intent of the husband and the grantor jointly, for which the wife gives her note jointly with her husband, cannot be set aside as in fraud of creditors where the debtor has not parted with any of his property in the transaction.)

Kalbfleish v. *L. I. Ry. Co.*
Filed June 1, 1886.—N. Y.

[The owner of a factory is not guilty of negligence in keeping varnish outside and near the railroad track, and if ignited by sparks from an engine emitted from a defective "spark arrester," the company is liable for the damage done.]

Hyde Park v. *Washington Ice Co.*
Filed May 15, 1886.—Ill.

(An instruction directing the jury to ascertain the depreciation in value caused to certain property by an improvement is not faulty.)

Wallahan v. *Ingersoll.*
Filed May 15, 1886.—Ill.

(In establishing a title in the state by escheat it is essential that in the judicial proceedings the statute be strictly complied with.)

Savings Bank v. *Com. Union Association.*
Filed June 30, 1886.—Mass.

(Where property subject to a mortgage is insured and a loss occurs, and the mortgagee sends the company notice of the loss, signed by him and also signed by the owner of the property, requesting a reply if any further notice is required, to which no reply is made by the company. *Held* that the company thereby waives any defect in the notice.)

Damon v. *Deeres.*
Filed July 15, 1886.—Mich.

(Where a mortgage contains a palpable error in the figures as to the sum due, foreclosure may be had for the real debt without a previous reformation of the mortgage.)

Martin v. *M. and O. Ry. Co.*
Filed July 15, 1886.—Mich.

(Where an employer gives his employe an order on a store for goods, and it is presented and the goods obtained and charged to the employer, this does not constitute an assignment of the laborer's claim.)

Carrier v. *Heather.*
Filed July 15, 1886.—Mich.

(Where state lands are conveyed to one who pays for the same with money furnished by another, with whom there is an express

agreement that the former shall convey to the latter, the statute against resulting trusts does not bar his rights.)

Farmer, Assignee v. *Cobban.*
Filed February, 1886.—Dak.

(A deed of assignment for the benefit of creditors must be accompanied by affidavit of the assignor that the schedule is a full, just and true statement of his assets and liabilities, and must be filed with the deed.)

Reitan v. *Goebel.*
Filed July 7, 1886.—Minn.

(The condition of a stay-bond, given on appeal from an order denying a new trial, does not require the payment of the final judgment.)

Gille v. *Hunt.*
Filed July 7, 1886.—Minn.

(A deed or mortgage of land made to a firm in the firm's name, runs to the individuals named in the firm name, and not to those whose name does not appear in the name of the firm.)

Hawkins v. *Circuit Judge.*
Filed July 21, 1886.—Mich.

[Where an appeal is taken from the taxation of costs to the circuit court, that court should not remand, but should at once make the correction.]

Kinney v. *Robinson.*
Filed July 21, 1886.—Mich.

[An attorney has a lien on a judgment, which he recovers for his client to the extent of his taxable costs, which no set-off can defeat or impair.]

Brown v. *Weightman.*
Filed July 21, 1886.—Mich.

(An objection raised on the trial should be accompanied by the reasons therefor. A witness may be shown a book of original entries to refresh his memory.)

Ellsmore v. *Gamble.*
Filed July 21, 2886.—Mich.

[Nothing but the issue framed by the pleadings can be reviewed by the appelate court, and statements repugnant to this issue should not be regarded.]

Braley v. *Henry.*
Filed May 27, 1886.—Cal.

(In an action on a promissory note in the hands of payee or in the hands of a third party having notice of all the facts, the maker may defend on the grounds of a collateral agreement that there was to be a conditional credit on the amount in the face of the note.)

Leppla v. *Minn. Tribune Co.*
Filed July 25, 1889.—Minn,

(The husband or wife cannot be examined as a witness as to any communication between them unless the other consent to such examination.)

Sanborn v. *Minneapolis.*
Filed June 25, 1886.—Minn.

(The interest of the state in lands cannot be affected by the statutes relating to the assessment and collection of taxes. The easement of a highway cannot be affected by a judgment against the land.)

Reilly v. *Stephenson.*
Filed July 21, 1886.—Minn.

(The laborer in cutting logs has a lien thereon for his wages, although there be no privity of contract between him and the owner of the logs.)

Irving v. *Carpenter.*
Filed June 17, 1886.—Cal.

(Where the name of defendant is unknown, he may be designated by any name in the pleading and when his true name is discovered the pleading should be amended accordingly.)

Turner v. *Strengel.*
Filed June 17, 1886.—Cal.

(A material man is only entitled to a lien on that portion of the contract price which has not been paid to the contractor, and the complaint in such case must allege money due from the owner to the contractor.)

Hemphill v. *Collins.*
Filed June 12, 1887.—Ill.

[An appeal may be taken from an order in an attachment suit discontinuing the attacement and taking judgment on the merits of the case.]

Hanchett, Sh'ff v. *Kimbark.*
Filed June 12, 1886.—Ill.

(Where a party to the action is a witness, or where the witness is an unwilling one, the court in its discretion may allow the range of cross-examination to extend beyond the limits of the direct examination.)

C. B. and Q. Ry. Co. v. *Boyd.*
Filed June 12, 1886.—Ill.

(Where the vendee of property is in possession, it is notice to all the world of all just claims of the vendee.)

In Re Bickerstoff.
Filed June 25, 1886.—Cal.

(A license law for the purpose of regulating the traffic in intoxicating liquor and obtaining a revenue is held constitutional.)

Atkinson v. *Dailey.*
Filed June 22, 1886.—Ind.

(Instructions should be construed as a whole and not by separate paragraphs or items. The jury should in all cases be governed by the evidence in the case and not by preconceived notions as to the value of service for which compensation is asked.)

Miller v. *State.*
Filed June 19, 1886.—Ind.

(Where a personal pronoun is so used in an affidavit that it may refer to either party, the meaning is to be taken from the affidavit as a whole and the strict rule of grammar may be disregarded.)

Brown, Ex'r v. *Critchell.*
Filed June 16, 1886.—Ind.

(The want of legal capacity to sue has reference to the plaintiff under legal disability and not to the fact that the facts in the case give no right of action.)

Kopp v. *French et. al.*
Filed June 22, 1886,—N. Y.

(One who has been appointed a policeman, who has been convicted of a crime which makes him inelligible, may be summarily dismissed subsequently by the commissioners.)

Liddy v. *Long Island City.*
Filed June 8, 1886.—N. Y.

(Notice of filing an undertaking given by mail on the 7th, and an answer excepting thereto is mailed on the 17th day of same month, it is sufficient and unless the sureties justify the appeal will be dismissed.)

B. and O. Ry. Co. v. *Owings.*
Filed June 23, 1886.—Md.

(The rights and obligations of railway companies and travelers on highways at points of intersection are mutual, and where injury is done the question of contributory negligence depends on the circumstances in each particular case and is a question for the jury.)

Stewart v. *Carbett.*
Filed June 22, 1886.—Md.

(An unqualified admission of existing indebtedness made to the plaintiff or his agent or to a stranger, will remove the bar of the statute of limitations.)

People v. *Fonda.*
Filed July 15, 1886.—Mich.

(An action for embezzeling funds of a national bank can be prosecuted only in the United States court, the state court having no jurisdiction.)

Lamson, Ex'r v. *Monroe.*
Filed June 23, 1886.—Maine.

(A gift *causa mortis* is not valid unless the intention to make the gift is clearly apparent and as complete a delivery made as the nature of the property will permit.)

Grimont v. *Hartman.*
Filed Feb. 8, 1886.—Pa.

(Where an employe brings an action against his employer for damages for injuries arising from the use of machinery, the bur-

den of proof is on the plaintiff to show that the machinery was imperfect. The presumption is that it was suitable machinery.)

Simmerman v. *Clevenger.*
Filed June 3, 1886.—N. J.

(The common law rule that a *capias* must be returned at the next term is still in force.)

Gerry v. *Remick, Trnstee.*
Filed June, 1886.—Maine.

(An agreement between the trustee and principal defendant, made after servlce of attachment, ratifying a prior unauthorized payment by the trustee, cannot defeat an attachment in a trustee process.)

Madeira's Appeal.
Filed February 8, 1886.—Pa.

(Where a son sent money to his father as a gift, to help to support him and his family, *held* that these were not assets for which the father was liable.)

Charliss v. *Wylie.*
Filed July 9, 1886.—Kans.

(Where an agent or clerk is guilty of embezzlement of his principal's funds, the principal may waive the tort and off-set the defalcations against his note held by the agent or clerk.)

Blake v. *Baldwin.*
Filed February 12, 1886.—Conn.

(Where execution or attachment creditors enter into an agreement with unsecured creditors that the property of the debtor shall be sold, and the proceeds divided pro-rata, the senior creditors thereby waive their priority and the mutual promises are a sufficient consideration to support the agreement.)

Fronnstine v. *Sellers.*
Filed July 9, 1886.—Kans.

(A proposition to enter into a contract must be accepted within a reasonable time or it may be withdrawn. Where a proposition is sent through the mail the party has a right to expect an answer in due course of mail without delay.)

Sehofield v. *Stoddard.*
Filed July 30, 1886.—Vt.

(Exceptions to the admission of evidence before a master will not be considered unless they are followed by exceptions to the report.)

Adamson v. *Cheney.*
Filed July 20, 1886.—Minn.

(In insolvency proceedings the person in whose favor a claim is filed and allowed, is the person by whom release must be made and filed, and to whom notice must be given if ordered.)

First Nat. Bank v. *Drake.*
Filed July 9, 1886.—Kans.

(The board of directors of a national bank must act as a unit when assembled together. The assent of each one ohtained separately to a proposition will not bind the bank.)

Spinning v. *Spinning.*
Filed July 23, 1886.—N. J.

(A widow in possessiou of her husband's estate, holding until her dower be assigned, is not a life-tenant and is not bound to pay interest on an incumbrance or make repairs and pay taxes.)

Ryan v. *Long.*
Filed Jaly 9, 1886.—Minn.

(Where an attorney-at-law is called upon for an opinion and he assumes to give the opinion desired, the relation of attorney and client is established.)

Weed v. *Mirich.*
Filed July 15, 1886.—Mich.

(Where personal property is conveyed by an instrument which shows that it is a security for a debt it may be held to be a chattel mortgage.)

Roberts v. *Radcliff.*
Filed July 9, 1886.—Kans.

(Where a party purchased a stock of millinery goods at about 50 per cent. of cost price of the owner, who was in failing circumstances, and employed the vendor to run the business, and payment was made by giving notes on long time, and the sale was hurriedly made. *Held* to be in fraud of creditors and void.)

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AN EXCELLENT LAW SCHOOL.

Within the past three or four years the Law Department of the Universitiy of Notre Dame, situated at Notre Dame, just north of the city of South Bend, Indiana, has taken rank among the very best law schools in the country. Not one of its graduates, during that time, has failed to pass a creditable examination for the Bar in any of the states. While its diploma admits the holder, without examination, to the Bar of Indiana, yet in other states prevails the general rule applying to all law schools outside of their respective jurisdictions, and an examination is necessary. But it is worthy of note, that the graduates of Notre Dame have not only successfully passed that test in every case, but also have on several occasions been highly complimented by the examiners. The methods of studying law at Notre Dame differ in certain particulars from those in force at Harvard, Yale, Ann Arbor, etc. The duration of the regular course is from two to three years—two years for those who attend two lectures a day, and three years for those who attend but one. Each lecture lasts an hour. The first is delivered in the morning, soon after breakfast, and the other begins at 2.30 o'clock in the afternoon. While these lectures are very carefully condensed, they are yet so arranged and delivered that the youngest student cannot fail to understand them. They are prepared with special reference to brevity and clearness, and are free from the contradictory and repugnant dicta so

commonly found in the text-books. They are delivered slowly enough to enable the student to write them down substantially as given. The notes thus taken in class are re-copied or transcribed in appropriate books, words omitted being supplied and sentences filled out, as the memory and taste of the young man may suggest. At the same time he consults in the library some of the authorities cited. The practice of listening to and transcribing the notes tends to fix firmly and ineffaceably in the memory the definitions and principles they embody. From time to time questions touching the subjects treated in the lectures are asked by the Professor, and statements of facts showing the application of the principles taught are submitted for opinion to the class. After an expression of opinion by the students generally, the Professor briefly analyzes the facts embodied in the statement, points out the application of the law to them, and finally states the correct and decisive rule as to the whole case. In the Moot Court of the University cases are tried once a week, the Professor presiding as Judge. This court is regularly organized, having its clerk, prosecuting attorney, sheriff, etc. Pleadings are prepared and filed, issue is joined, juries are impaneled, and cases tried in as close accordance as possible with the order of procedure in the regular courts of law and equity. Prof. William Hoynes, a well-known and highly respected lawyer of this city, is the Dean of the Law Faculty. Furthermore, it is the privilege of all the law students, who so wish, to attend the other classes in the University course, such as history, philosophy, logic, mathematics, the sciences, languages, etc., and to do so involves no extra charge or expense. The students make their home in the University, boarding and living within its precincts, and thus they enjoy immunity from the temptations and distractions incident to "boarding around" in a town or city. The buildings are very large and the grounds very extensive, while the location is singularly beautiful and charming. Students may enter at any time. Send for catalogue.

ORIGIN AND UTILITY OF CASE-LAW.

(Read before the Allegheny County Bar Association, Pittsburg, Pa.)

The law of the case, as solemnly declared from time to time by the courts of justice, constitutes a large part of that system of jurisprudence which is the common heritage of the Anglo-Saxon race. The circumstances which led to the establishment of the principle that precedents should have the force of law, and the value of that principle, as part of our system, can only be appreciated after a full historical examination. The rigid historical method has yielded splendid results, of late years, in the various fields of research, and among others in that of the law. Much light has been shed on the sources of the common law, especially in its relation to the great judicial system which preceded it in Europe. It will, of course, be only possible in this paper to glance at the salient facts.

In addition to the actual historical connection between the Roman and English systems, there are striking similarities, in some particulars, in the methods by which they were developed. As it will be necessary, during the progress of this discussion, to refer at several points to the civil law, it will be convenient here to mention briefly the sources from which it was derived, and the process of its development. Under the kings, for a period of about two hundred and fifty years after the founding of the city, Rome was governed chiefly by customary law. There was some fragmentary legislation, but the body of the municipal law consisted of precedents and general usages. These customs undoubtedly came to assume the authority of law by the same process which seems to have operated, almost universally, among the families of men. It clearly appears that, in the history of all primitive nations, the period of statutory enactment is preceded by one of customary

law, in which the usages generally observed by the people are permanent, and are clothed with at least as great majesty and authority as the formal statutes of more highly civilized nations. About forty years after the establishment of the republic, the law of the twelve tables was compiled. This code contained, in extremely meager outline, the law that was then observed. It formed an epoch in Roman jurisprudence, not so much on account of what it contained, as on account of its influence on the jurists of the subsequent ages. It contained some things that were wise, and some that were foolish, some that were just and some that were cruel; but the patriotic feeling of succeeding ages led the people to regard this venerable monument as "*fons omnis publici privatique juris.*" The sages of the law made it the basis of their commentaries, and the magnificent judicial system of later times was supposed, by a fiction, to be simply a development of principles which lay more or less concealed in the code of the twelve tables. Very much in the same way, the early judges of England held the common law to be the perfection of reason, and that it contained principles in reserve somewhere, "*in nubibus* or *in gremio magistratuum*," which, if brought to light, would cover every case that might possibly arise. After the period of the twelve tables, the body of the statute law slowly increased, and in the course of ages it assumed considerable magnitude. During the time of the empire, the imperial decrees, framed chiefly by great jurists, had the force of law. But all of these together, the twelve tables, the laws, the imperial decrees, formed but a fragment of what was afterwards codified by the command of Justinian, and has been known to the world as the *corpus juris civilis.*

The character and form of the civil law were due to the labors of the jurists. In the last centuries of Roman history, the science of the law was pursued with remarkable zeal, and the legal profession enjoyed great influence. A method was in vogue which conduced to a rapid and systematic development of the science. Great lawyers were consulted publicly by their clients and students, and replied to their questions surrounded by a throng of admirers. It was a matter of total indifference whether the case proposed was real or imaginary, and the students exercised their ingenuity in devising complicated questions for solution. All of this was carried on with great energy and enthusiasm. It is evident that in this way the law could be applied rapidly to every combination of facts that could be conceived, and when done by an Ulpian or a Gaius, the result would be rapid development combined with breadth of principle, symmetry and elegance. The replies and lectures of the juris-consults were taken down by their students, and published under the name of *responsa prudentum.*

The prætorian edict must be mentioned in this connection. The prætor was charged with functions similar to those of both the chief justice and the lord chancellor of England Law and equity are administered by the same courts, although the systems were, to a large extent, destinct. The prætor held office for only one year, and in order that some limits might be placed on his powers, he was required to publish an edict, at the beginning of his term of office, containing the principles by which he would be governed in the exercise of the equity powers of the court. The body of this edict was compiled from the doctrines of the juris-consults, and continued the same, substantially, from year to year, with such additions and modifications as seemed needful. It finally came to be a compendium of equity, and contained the principles of that branch of jurisprudence. In the reign of Hadrian, further changes in the edict ceased, and it was thenceforward known as the perpetual edict, and it always maintained an important place in the Roman law. The principles of equity prevaded the writings of the jurists, furnished them illustrations and generalizations, and above all, inspired them with the spirit of legal progress, and with a desire to attain to a perfect system of law.

The edict, the *responsa prudentum*, and the voluminous commentaries written by the sages, furnished the material, which was systematically arranged by Justinian's codifiers, in the *corpus juris*, and which, by a decree of the emperor, was made the law of the eastern empire. It was the legal principles laid down by the jurists which gave the civil law its renown, and which, without doubt, gave it title to be ranked as the greatest intellectual echievement of the ancient world. We are therefore to note especially that this admirable body of law was only in small part the product of direct legislation, and we may confidently affirm that it was beyond the power of the Roman legislature to produce so perfect a system.

It is evident that there are marked similarities between the character and the course of development of the Roman and English law, while there are also marked differences. Both were eminently progressive. In both instances there was a large body of common, or unwritten law, and in both the unwritten law was cultivated more assiduously than the written, and developed more rapidly. In Rome, the law was improved by the labors of the bar. In our sense of the term, there was no bench. The magistrate held office for only one year, and was sometimes a mere figure-head. His decision was conclusive in the particular case, but had no authority as a precedent. If the magistrate happened to be a jurist, his opinions had weight in proportion to his reputation, but beyond the cases in which they were delivered they had no more authority than the opinions he gave when out of office.

When the Saxons conquered England, they were untamed barbarians. Roman civilization had not visited them in their original home, either with its blessing or curse. They brought to England no books, little property and a slender stock of immemorial tribal customs. They were valiant, fierce and indomitable, and, unlike the Franks in Gaul, and the Goths in Spain, they exterminated the population of the island, as far as their conquests extended, and destroyed its Roman civilization root and branch. Yet the Creator had endowed these Saxon barbarians with capacity, energy, aud the spirit of freedom, and they only needed religion, law, culture, to place them in the foremost rank of progressive races of mankind. The stationary peoples, like the Chinese, have a rigid, unyielding body of law, adapted to an early stage of their history, and they esteem it the highest wisdom to adhere to the letter of their ancient customs. They are alive, but they are in a shell, from which they have neither the disposition nor the ability to escape. The Saxons, when they settled in England, were in the same mental, moral and political condition as the people who founded the great city on the banks of the Tiber, more than a thousand years before. They were a lot of freebooters with great expectations.

One of the chief problems which presented itself to them, was how to create a system of law which would be adapted to the wants of such a people as they were destined to become. Of course, this was not to them a conscious problem. All such problems are worked out unconsciously; yet it was a real problem, and at this day we are able to trace clearly its solution.

The Anglo-Saxon period was one of great violence. Customary law maintained its sway, and no doubt, was slowly developed. There were scanty bodies of statute law, bearing in later times the names of Ethelbert, Ina, Edgar, Alfred and other Saxon kings. About the sixth, seventh and eighth centuries, it appears that all the western nations, which grew up on the ruins of the empire, reduced some of their laws to writing. These were the first rude attempts at legislation. The Saxon tribunals were the court of the hundred and the county court, which were for the most part, tumultuous assemblies, where justice was administered in a rough, off-hand way. Before the time of the Norman conquest, however, there was a notable improvement in the character of the courts, and in their methods of procedure, as appears from the *Mirror of Jnstice*, which

though written in the reign of Edward I., is said to incorporate an earlier work of the time of Alfred. But the most significant thing which appears in the latter part of the Saxon period, is the fact that courts were regularly held by judges, learned in the law, whose decisions were regarded as precedents, having the force of law. This marks a great epoch in the legal and constitutional history of England. The principle thus established in the Saxon times, as to the proper function of the court in establishing the law, has remained undisturbed to this day, and we may safely say that it has accomplished more for the improvement of the law than all other agencies combined.

For a considerable time after the Norman conquest, the courts made steady progress in declaring the law, and, what is perhaps of equal practical importance, in perfecting methods of procedure. During this period, no valuable treatises were produced, and there was little legislation. The law was advanced almost solely by the courts. In the time of Henry I. a treatise appeared—the first of its kind—on procedure, which contains the methods settled by the courts at that period, showing that the essential principles had been established. Henry instituted the system of itinerant justices, who were directed to hold courts in all the counties. The regular judicature thus founded worked a revolution in the administration of affairs. The progress of the law became much more rapid, and it was effected for the most part through the decisions of the courts of justice. HARVEY HENDERSON.

ACCORD AND SATISFACTION.—GIVING OF A NOTE.—ACCEPTANCE.—Where there was an unsettled account and the parties unable to agree upon the balance, the Creditor sent a statement of the account to the debtor, and the debtor in reply sent a statement of what he admitted due, and with it sent his note for the amount. The creditor accepted and used the note. *Held* that in doing so, he did not thereby bar his claim for the balance of the amount claimed.—*Rubber Co.* v. *Wringer Co.*—Filed Aug. 11, 1886.—Vt.

ACTION OF DECEIT—MONEY OBTAINED ON FALSE REPRESENTATIONS—MEASURE OF DAMAGES.—Where one fraudulently induced another to purchase property on the allegations that the title was good and the property worth much more than the price given, when in fact the title was not good, in an action for deceit on account of the false representation, the measure of damages is the amount of money parted with in the transaction and not the difference between the actual value and the value fraudulently represented.—*Horne* v. *Walton.*—Filed May 15, 1886–Ill.

APPEAL.—WHEN MUST BE TAKEN TO THE APPELLATE COURT.—Where land is sold on execution and in bill to vacate the sale on the ground that the party against whom the execution ran had no interest in the land, an appeal from the decree in such case does not involve a question of freehold, and must be taken to the appellate and not to the supreme court.—*Johns* v. *Boyd.*—Filed June 12, 1886.—Ill.

ASSAULT WITH A DEADLY WEAPON.—EXCESSIVE OR CRUEL PUNISHMENT.—CONSTITUTIONALITY OF STATUTE.—A statute which prescribes as a penalty for an assault with a deadly weapon, imprisonment not exceeding two years and a fine not exceeding $5000 is held constitutional, and not to be excessively cruel or unusual.—*Ex. Parte Mitchell.*—Filed May 29, 1886.—Cal.

ASSIGNMENT OF JUDGMENTS.—COLLATERAL AGREEMENT.—THE PURCHASER MAY RELY UPON THE RECORD.—Where one holding a judgment which is a secondary lien on the property of the debtor, the same party holding the first lien also, sells the former and enters into a collateral agreement that the judgment which he assigns shall have preference as a lien, and subsequently sells and transfers the judgment which is a prior lien in violation of the agreement, the purchaser of the latter judgment is entittled to rely

upon the record and to assert his lien.—*Winton's appeal.*—Filed March 22, 1886—Pa.

ASSIGNMENT OF WRITTEN INSTRUMENTS.—INSTRUMENT DEPENDING ON EXTRINSIC PROOF.—Any instrument in writing, complete in itself is assignable, but not so if it is dependent on extrinsic proof. A covenaut for the payment of rent unqualified is assignable, but if qualified or limited by some outside fact, as *from the date of occupancy*, it is not so assignable.—*Potter* v. *Groenbeck.*—Filed June 12, 1886.—Ill.

ASSIGNMENT FOR BENEFIT OE CREDITORS.—PARTICIPATION IN DISTRIBUTION BY LIEN CREDITOR.—A lien creditor who participates in the distribution of the assets under a general assignment, cannot subsequently deny the validity of the proceeding and he waives his right of election, as to surrendering his lien and to rely upon the proceeds of the sale of the property, with other creditors.—*Hoosey* v. *Chew.*—Filed June 24, 1886.—Md.

ASSIGNMENT FOR BENEFIT OF CREDITORS.—MADE UNDER AN AGREEMENT WITH CERTAIN CREDITORS FOR A SPECIFIED EXEMPTION.—The proceedings in an assignment for the benefit of creditors must be strictly according the requirement of statute or they will be void. Where a debtor agrees with certain of his creditors to make an assignment for their benefit of all his property, they allowing him the same exemption provided in the bankrupt law, such a transfer is *held* to be an assignment for the benefit of the creditors in general and not being according to statute is void.—*Kimball* v. *Evans.*—Filed Aufi, 23, 1886.—Vt.

ASSUMPSIT.—STATUTE OF LIMITATIONS.—MUTUAL ACCOUNT.—In an action of *assumpsit* on an open account, all but three items charged were over six years, and more than six years had run since the last payment on the account. The court instructed the jury that unless the last three items were found to be part of the general account, the whole was barred by the statute. *Held* error, as the plaintiff in any event was entitled to recover for the last three items.—*Dunbar* v. *Dunbar.*—Filed June 26, 1886.—Me.

ATTACHMENT.—ACTION UPON BOND.—APPROVAL OF BOND.—Where an attachment issued in the superior court was dissolved and the case prosecuted to judgment, and an action on the bond commenced in this court, the defendants cannot avail themselves of any invalidity in the judgment, by plea under the answer, which was a general denial. The judgment remains in full force and must be taken as valid.—*Fogel* v. *Dussault.*—Filed Feb. 25, 1886.—Mass.

ATTACHMENTS.—TWO OR MORE AGAINST SAME DEFENDANT, RETURNABLE AT SAME TERM.—Where two attachments were issued against the same defendant, returnable at same term, the court say "they should share in the property attached *pro rota.*" Neither attachment was entitled to priority over the other in respect to any of the property attached, and where one of the creditors purchases the claim of the other, the claims become merged.—*Donk* v. *Alexander.*—Filed June 12, 1886.—Ill.

ATTACHMENT.—OFFICER A GUARDIAN OF THE PLAINTIFF.—When an officer has made service of an attachment and pending the proceeding, the officer is appointed guardian of the plantiff, the writ and service of the attachment already issued and served must abate.—*Clarh* v. *Patterson.*—Filed Aug. 30, 1886.—Vt.

ATTORNEY AND COUNSELOR.—COMPROMISE OF A SUIT. — RATIFICATION OF BY A CLIENT.—An attorney has no right to compromise a suit unless specially authorized to do so, yet an unauthorized settlement may be ratified and become operative by the ratification of the client. Such ratification may be express or it may be implied from knowledge, acquiescense, or by accepting the benefits thereof, the same as the ratification of an unauthorized act of an agent by the principal. —*Wetherbee* v. *Fitch.*—Filed May 15, 1886.—Ill.

BAILMENT OR SALE.—WHEN PROPERTY IS DELIVERED BY ONE TO ANOTHER, WHEN A SALE AND WHEN A BAILMENT.—Where grain is received by a dealer under an agreement to pay the market price upon demand, and he mixes the grain with other grain in a bin, it becomes a contract of sale and not a bailment. In such case, if the depositor can compel a delivery of the grain, it is a bailment; if the receiver has an option to pay for the same in money or in grain it is a sale. In this case held to be a sale.—*Lyon* v. *Lenon.*—Filed June 3, 1886.—Ind.

BIGAMY.—REGISTER OF MARRIAGES KEPT IN ANOTHER STATE AS EVIDENCE OF MARRIAGE.—A man lawfully married and cohabiting with his wife in Illinois, goes to Minnesota and marries another woman and they return together and live in Illinois. In an action against the man for bigamy, the marriage-certificate and the record of the marriage in Minnesota is introduced in support of the indictment. *Held* that the admission of this record was error as the record was not kept in pursuance of a statute.—*Tucker* v. *People.* — Filed May 15, 1886. — Ill.

BILL IN EQUITY.—VERIFICATION OF DEMURRER.—In a bill for discovery and to compel a transfer of real estate, the court say: "It is the opinion of this court that under our practice a bill for an injunction is not demurrable for want of an affidavit". "Our practice is to issue an injunction *ex parte*". Further: "The bill is not demurrable for want of an affidavit", when it is a bill of discovery. The bill asks for discovery but waives an answer under oath. The answer therefore will have simply the force of a plea.—*Harrington* v. *Harrington.*—Filed july 10, 1886.—R. I.

BOND AND MORTGAGE.—SECURITY FOR THE SUPPORT OF HUSBAND AND WIFE FOR LIFE.—BREACH.—Where a bond secured by a mortgage was given as security for the support of a man and his wife during their natural life, after the death of husband an action of foreclosure is brought by the administrator of the deceased hnsband for a breach of the bond. The court was asked to instruct the jury, that if a breach occured it was since the death of the husband and that the plaintiff could not recover unless a breach was shown during the lifetime of the deceased husband, which the court declined to give. The court did instruct the jury that it was necessary to recovery that the plantiff should show a breach, but that it was not necessary that it should have occurred during the lifetime of the husband. If it occurred any time before the commencement of the action it was sufficient, *Held* that these instructions were correct.—*Plummer*, admr. v. *Doughty.*—Filed Aug. 5, 1886 —Maine.

BOND AND RECOGNIZANCE.—DISTINCTION PRACTICALLY ABOLISHED.—APPEAL FROM THE PROBATE COURT.—The court say " In this state the difference between a recognizance and a common bond is now largely one of mere form". The one or the other term is often used without strict regard to the technical difference. In an appeal from the probate to the district court an undertaking may be filed in lieu of are cognizance. —*In Re Will of Brown.*—Filed Juni 25, 1886.—Minn.

BURGLARY.—CIRCUMSTANTIAL EVIDENCE. —INTENT TO COMMIT A CRIME.—Where one is found in a position which cannot be accounted for on any other hypotheses than that he intended to commit burglary, the jury is justified in finding that he intended to commit a crime, and a conviction for burglary will be sustained.—*People* v. *Morton.*—Filed June 10, 1886.—Cal.

CEMETERY.—PUBLIC USE.—VARIATION IN PRICE OF LOTS.—The use of land for cemetery purposes is a public use, and land may be taken for the purpose by the right of eminent domain. The variation of the price of cemetery lots is not inconsistent with the public use of the land.—*Evergreen Cemetery* v. *Beecher.*—Filed Feb. 2, 1886.—Conn.

CARRIERS OF PASSENGERS. — INJURY CAUSED BY SUDDEN STARTING OF TRAIN.—Where a railway train has been announced for a certain station, and has been slowed up until seemingly stopped, and passengers having arisen to leave the car, the train is suddenly lurched by a jerk, whereby passengers are injured, the company is guilty of negligence and liable for the injury. — *Bartholomew* v. *N. Y. C. H. Ry Co.*—Filed June 1, 1886.—N. Y.

CERTIFIED CHECKS.—PRIMARY LIABILITY OF THE BANK CERTIFYING.—SENDING CHECK TO THE CERTIFYING BANK FOR COLLECTION. —If a bank certifies a check it is primarily liable therefor, although the depositor has no funds on deposit to meet it. A bank receiving a certified check for collection, does not exercise due care, if it send the check to the certifying bank for collection, as it would enable the certifying bank to destroy the evidence of its indebtedness.—*Drover's Nat. Bk.* vl *A. M. P. & P. Co.*—Filed May 15, 1886.—Ill.

CHARTERS OF CORPORATIONS SUBJECT TO MODIFICATION.—POLICE POWER OF STATE.—A charter granted to a corporation is in a certain sense a contract between the state and the corporation, yet the state reserves the rlght to modify or regulate the corporation in the exercise of the powers conferred. The legislature may compel a railway company to construct private crossings.—*I. C. Ry. Co.* v. *Willenborg.* —Filed May 12, 1886.—Jll.

CONTRACT.—WHEN BURDEN IS ON PARTY TO SHOW GOOD FAITH AND THE ABSENCE OF FRAUD.—Where one standing in a confidential relation to another, who is in distress, makes a contract with the latter, if the question of unfair dealing is raised, the circumstances cast suspicion of fraud, and the party occupying the confidential relation is bound to show the absence of fraud or any undue influence, and that the making of the contract was a free and voluntary act.—*Ikerd* v. *Beavers.*—Filed May 25, 1886.—Ind.

COMPLAINT.—DISMISSAL OF PART THEREOF.—INTERROGATORIES TO JURY.—A part of a complaint may be dismissed any time before submission to the jury, and if such dismissal leaves the complaint indefinite the defendant's remedy is by motion to have it made more specific. Interrogatories submitted to a jury must ask for statement of facts only.—*L. N. A. & Co.* v. *Worley.*—Filed May 25, 1886.—Ind.

CONTRACT.—NEGLIGENCE IN SIGNING WITHOUT READING.—LIABILITY.—Where one signs a contract or note without reading it, when he has an opportunity to read it or have it read to him, he cannot avoid liability although the instrument is conditioned different from what he supposed it was. He is guilty of negligence in signing without reading it.—*Keller* v. *Orr.*—Filed May 22, 1886,—Ind.

CONTEMPT.—ORDER OF IMPRISONMENT FOR NON PAYMENT OF FINE.—REMEDY.—Where a witness is fined for contempt and committed pending to payment of the fine, he cannot have relief by *habeas corpus.*—His remedy must be by writ of error with an order for a *supersedeas.*—*In Re-Petition of Smith.*—Filed May 24, 1886.—Ill.

CO-TENANT.—ADVERSE POSESSION BY ONE CO-TENANT AS AGAINST ANOTHER CO-TENANT. —Where the defendant, who was co-tenant with plaintiff, went into possession, occupied and appropriated the rents of the lands to her own use, this alone would not render the possession adverse. There must be outward acts of exclusive ownership.—*Todd* v. *Todd.*—Filed May 14, 1886.—Ill.

CONVEYANCE FOR CEMETERY.—POWER OF ALIENATION.—IMPLIED COVENANT IN CONVEYANCE.—Where land is conveyed for cemetery purposes, although there be no express covenant to that effect, the land will revert when it ceases to be used for the purpose for which it was conveyed. Equity will not compel a man to accept a title which is not free from a reasonable doubt. — *University* v. *Dugan.*—Filed June 23, 1886.—Md.

CONDEMNATION PROCEEDINGS.—WHEN PLAINTIFF MAY ABANDON PROCEEDINGS.—TITTLE.—Where condemnation proceedings have been commenced by a railway company against certain lands, and the tittle in the defendant is found to be a qualified tittle, the plaintiff cqnnot abandon the proceedings after verdict and still retain possession of the land. Its remedy is by a seasonable application to amend its petition or after verdict by motion for a new trial,—*Wilcox* v. *St. P & N. P. Ry. Co.*—Filed July 15, 1886.—Minn.

CONDITIONAL SALE.—TITLE TO REMAIN IN VENDOR.—A WRITING SHOWING AN ABSOLUTE SALE.—Where one sold a horse under the verbal agreement that the title should remain in the vendor until paid for, and the vendor gave the vendee a writing showing an absolute sale of the horse. A creditor of the vendee attached the horse, the paper showing an absolute sale having been showing him. *Held* that the paper thus showing an absolute sale could not be modified by parol testimony as to the conditional sale. *Dixon* v. *Blondin.*—Filed Aug. 23 1886. Vt.

CONTRACT.—DELIVERY OF LOGS OF A CERTAIN QUALITY.—WARRANTY.—In a contract for the delivery of logs of a certain quality at a certain place, to be inspected upon delivery, the agreement as to the quality is held to be a condition and not a guaranty, and where the logs were received and used or manufactured, the purchaser is *held* to have waived the condition, althongh he complained of the quality during the delivery.—*Thompson* v. *Libby.*—Filed July 15, 1886.—Minn.

CORPORATIONS.—LIABILITY OF STOCKHOLDERS.—PENDING THE FULL PAYMENT OF STOCK.—The statute imposing liability on stockholders, pending the full payment of the stock, was substiantially copied from the statnte of Massachusetts and the Massachusetts decisions constructing the statue are here followed. Where a corporation is organized and commence business and contracts a debt the stock not being paid in full, the liability attaches to all stockholders at the time the debt was coutracted, and all stockholders at the time an action on the debt is commenced, but not those who in the mean time may have held and disposed of stock.—*Sayles* v. *Bates.*—Filed July 10, 1886.—R. I.

CORPORATION.—TRANSFER OF FRANCHISE TO AN INDIVIDUAL TO BE USED FOR PRIVATE PURPOSES.—A street railway company having obtained the right and constructed a track on a certain street, subsequently abandoned the use of the track and transfered its interest therein to an individual who used the track as a privat switch or railway, connecting his factory with the railrood tracks. *Held* that the maintainance of the track for private purposes constituted a nuisance and his contract with the street railway company constituted no defence.—*Fanning* v. *D. M. Osborne & Co.*—Filed June 1, 1886.—N. Y.

CORPORATION.—MUTUAL BENEFIT ASSOCIATION.—RIGHTS OF PARTIES.—Where parties take the preliminary steps to form a corporation, and subsequently, without having perfected the corporation, issue a certificate to one as a member of the association, entitling him to benefits in case of disability. *Held* that a corporation *de facto* exists and an action may be maintained by the member for his benefits, against the corporation, but not against the individual members thereof.—*Foster* v. *Pray at al.*—Filed July 17, 1886.—Minn.

COUNTY COMMISSIONERS.—PURCHASE OF TOLL-BRIDGES OVER STREAM FORMING A COUNTY LINE.—The power conferred upon commissioners to purchase toll-bridges is limited to such bridges as the people of the community are manifestly interested in, and county commissioners have no official interest in or control of affairs outside of their own county. A toll-bridge over a stream forming a county line is one in which the people of the adjoining county are interested and the commissioners of one of the counties have no right to purchase such bridge with-

out the concurrence of the adjoining county. —*Board of Comrs.* v. *Thombson.*—Filed June 1. 1886.—Ind·

CORPORATIONS.—ALL THE STOCK OWNED BY ONE MAN.—MORTGAGE.—Where all the stock of a corporation is owned by one man and he executes a mortgage on the same, the mortgage has the affect of an equitable lien on the corporate property. Where corporate stock has been assigned, although not transferred on the books of the company, the assignee is thereby the equitable owner and may compel a transfer on the books of the company.—*Swift* v. *Smith.*—Filed June 23, 1886.—Md.

COUNTY SUPERINTENDENT OF SCHOOLS—REMOVAL OF.—INTOXICATION AS A CAUSE.—The statute concerning the county-superintendent of schools provides, that "The said superintendent shall be liable to removal by the county board for any palpable vialation of law or omission of duty." The intoxication of the county superintendent at a time when he should be attending to his duty, is a sufficient cause for removal. It is not necessary that formal charges be prefered against him.—*Shipley* v. *Mays.*—Filed June 12, 1886.—Ill.

CRIMINAL LAW.—EXAMINATION AND COMMITMENT.—CHARACTER OF DEFENDANT.—Slight informality or irregularity in the proceedings before the committing magistrate, are not snfficient ground on which to quash an indictment. In order to quash an indictment it must appear that the defendant has been deprived of some substantial right, upon trial a witness cannot testify as to the character of the defendant unless he has lived in the same neighborhood and knows his general reputation.—*People* v. *Rodrigo.* —Filed May 25, 1886.—Cal.

DEED AND LEASE FOR A LOAN.—MORTGAGE. — USURIOUS INTEREST. — Where a party executed a deed of certain lands and the grantee, on the same day leased the premises back to the grantor with the privilege of buying the land back within a certain time. *Held* that the transaction simply amounted to a mortgage as security for a loan and the lessor, having demanded and received a large bonus, he is compelled to account for it as usurious interest paid.—*Odd Fellows* v. *Merklin.*—Filed June 24, 1886.—Md.

DEED.—LAND BOUNDED BY STREETS AND ALLEYS DESCRIBED AS PER PLAT.—THE GRANT EXTENDS TO THE CENTRE OF STREET. —Where lots, described by a plat, showing streets and alleys, are conveyed and in the deed the lots are described as bounded by certain streets, the grant includes and conveys the land to the centre of the street on which the lots abut, subject to the interest the public has acquired in the street.—*Gould* v. *Eastern Ry. Co.*—Filed June 28, 1886.—Mass.

DEED.—DESCRIPTION BY METES AND BOUNDS WITH A RESERVATION FOR A STREET. —Where one conveyed land, describing it by metes and bounds specifically, and then adds a reservation of "a strip thirty-three feet in width on the south side of said tract, for a public street," such reservation is inoperative and the fee passes to the grantee.—*Elliott* v. *Small.*—Filed July 9, 1886.—Minn.

DEDICATION OF STREETS.—PLAN OF LOTS SHOWING STREETS AND ALLEYS.—SUFFICIENCY OF PUBLIC DEDICATION.—Where the owner of land makes a plat of the same, showing streets and alley ways and sells off lots from said plat, this constitutes a decication to the public of the land for the streets and alleys as indicated in the plat, and neither the original owner nor the owner of any lot can claim damages for the subsequent opening of the streets as laid out on the plat.—*In Re-opening of Pearl-st.*—Filed Feb. 1, 1886.—Pa.

DOWER.—BARRED BY AN ANTENUPTIAL AGREEMENT.—Where a man and woman, each owing property, are about to marry, and they enter into an agreement whereby each waives all rights which would by law accrue as the result of marriage, in the

property of the other, such agreement is valid and will bar the woman of the right of dower, although the agreement may be in some respects informal.—*Barth* v. *Lines.*—Filed June 12, 1886.—Ill.

DISCONTINUANCE BY ONE PARTNER.—COLLUSION AND FRAUD.—As a general rule where an action brought by a firm is pending, one partner may discontinue the case, but where one partner, in collusion with defendant, fraudulently attempts to discontinue the case to the injury of his co-partner, it will not be permitted. A partner thus desiring to discontinue a case, may have indemnity from his co-partner as against damage from prosecution of the action.—*Arnold* v. *Greene.*—Filed July 10, 1886.—R. I.

DRAINEGE.—ASSESSMENTS FOR DRAINS.—BURDEN OF PROOF IN AN ACTION TO QUIET TITLE.—An assessment for the construction of a ditch becomes a lien on the land. In an action to quiet title, the burden of proof is on the party asserting the lien to show that the assessment was made in compliance with the statute.—*Brosewer* v. *Kelsey.*—Filed May 25, 1886.—Ind.

DRAINAGE AND SEWAGE.—THE RIGHT TO DRAIN DOES NOT GIVE THF RIGHT OF SEWAGE.—Drainage is held to mean the drainage of water, but sewage is a conduit of filth. The right to construct a drain leading into another drain, does not give the right to construct a sewer leading into the drain.—*Wetmore* v. *Fiske.*—Filed July, 1886.—R.I.

DRAINAGE.—PROCEEDINGS TO ESTABLISH.—TRIAL BY JURY WITHOUT OBJECTION.—In proceedings to establish a system of drainage, where there is an issue, it is the intention of the statute that it shall be tried to the court and not to a jury. If the court on its own motion impannels a jury and the parties go to trial and submit the issue to the jury without objection, they cannot complain of the error on appeal.—*Drebert* v. *Frlet.*—Filed May 25, 1886.—Ind.

DRIVING LOGS.—RIGHT OF ONE TO DRIVE THE LOGS OF ANOTHER WHERE THEY FORM AN OBSTRUCTION IN THE STREAM.—Where one engaged in rafting, finds the logs of another in the stream forming an obstruction, he may drive the logs together with his own and recover compensation for the same. Where two parties, whose logs were intermingled, agree to drive their logs together, and, before arriving at a point where the logs can be seperated, one of the parties abandons the drive, the other may cause the drive to be continued and charge the owner with his portion of the expenses incurred.—*Beard* v. *Clarke.*—Filed June 28, 1886.—Minn.

EJECTMENT.—NEW TRIAL AFTER JUDGMENT BY DEFAULT.—Where defendant has failed to answer there is no issue to try and the court is justified in directing a verdict for plaintiff. This does not interfere with the discretion given to the jury to render a general or special verdict in such cases. A special verdict is one by which the jury find the facts only, and there being no issue raised there is no necessity for a special verdict.—*Hillam* v. *Doyle.*—Filed June 28, 1886.—Minn.

EMINENT DOMAIN.—THE STATE CANNOT BE DIVESTED OF THE RIGHT OF.—The legislature of a state cannot grant a corporation exemption from the effect of the inherent right of eminent domain. The right of eminent domain is an element of sovereignty, and a contract in restraint of its exercise is not obligatory on the state.—*Hyde Park* v. *Oak Woods Cemetery.*—Filed May 14, 1886.—Ill.

EXECUTORS AND ADMINISTRATORS.—JURISDICTION OF COMMON PLEAS IN AN ACTION ON ADMINISTRATOR'S BOND.—In an action in the common pleas to recover a sum decreed by the orphan's court, the court will not go behind the decree. An administrator misapplying the trust funds in payment of his own debts, and the party receiving such payment are jointly liable for the misappropriation of the funds.—*Miller* v. *Commonwealth.*—Filed April 5, 1886.—Pa.

ESTATE OF DECEDENT.—INTEREST ON CLAIMS AGAINST.—Where a claim has been presented against the estate of a decedent and allowed by the court, the claim will bear the legal rate of interest from the date of the order of allowance although, originally, the claim did not bear interest.—*Estate of Olvera.*—Filed July 20, 1886.—Cal.

EVIDENCE OF TITLE.—TAX TITLE.—COMPLIANCE WITH STATUTE.—BURDEN OF PROOF.—Proof of possession of land, under claim of ownership, is *prima facie* evidence of a title in fee in the occupant so claiming. Every purchaser at a tax sale or his assignee, before he is entitled to a deed, is bound to show strict compliance with the statnte. For this purpose he must make affidavit setting forth the facts relied on as a compliance with the statute.—*Harland* v. *Eastman.*—Filed May 15, 1886.—Ill.

EVIDENCE—ERROR WITHOUT PREJUDICE OR INJURY.—EXPERT TESTIMONY.—Where a witness is allowed wrongfully to testify, disregarding the objection of defendant, and subsequently defendant admits the facts which the witness testified to, he cannot afterwards complain of the wrongful admission of the testimony. Expert testimony concerning one's eye-sight connot be admitted unless it is first proved that the witness has made an examination of the person's eyes concerning whom he testifies.—*People* v. *Marseiler.*—Filed June 29, 1886.—Cal.

EVIDENCE.—AGREEMENT TO ADMIT IN COMPETENT EVIDENCE.—INSTRUCTIONS.—A party to a suit having agreed, that certain evidence shall be admitted, which is properly inadmissible, is stopped from objecting to its admission on account of his agreement. If instructions are not given to the jury in the identical language requested, it is no ground for exception.—*Walker* v. *Walker.*—Filed July 30, 1886.—N. H.

EXECUTORS AND ADMINISTRATORS.—ANCILLIARY ADMINISTRATION—REMISSION OF ASSETS.—When there are claimants within the jurisdiction of the ancilliary administration, and there are debts to be paid, the assets of an estate of a foreign decedent will not be remitted to the executor of the foreign domicile. One having no direct interest in an estate of a creditor of a legatee cannot demand an account or interfere in settlement.—*Appeal of Del Valle.*—Filed April 19, 1886.—Pa.

EXEMPLARY DAMAGES.—TRESPASS COMMITTED BY THE WIFE.—LIABILITY OF HUSBAND.—Where an assault was committed by a wife and an action was brought against husband and wife, it is *held* that exemplary damages may be assessed against the husband and wife although, the husband used all his endavors to prevent the assault.—*Lombard* v. *Batchelder and wife.*—Filed August 21, 1886.—Vt.

FALSE IMPRISONMENT.—AN ARREST MADE WRONGFULLY BY ATTORNEY'S CLERK WITHOUT AUTHORITY.—LIABILITY OF PRINCIPAL.—Where a judgment was obtained and execution issued, and the clerk in the office of plaintiff's attorney wrongfully and without authority of the attorney caused an order of arrest to issue. *Held* that plaintiff was liable for the false or wrongful arrest of defendant thus made.—*Schattuck* v. *Bill.*—Filed May 11, 1886.—Mass.

FIRE INSURANCE.—ADJUSTMENT OF LOSS.—WHEN CAUSE OF ACTION ACCRUES UNDER A POLICY.—Where a policy of insurance continued a clause, providing for a certain method of adjusting the loss if any, it is *held* that the assured has no right of action against the company until a fair effort was made by him to have the loss adjusted in the manner prescribed.—*Adams* v. *S. P. & N. F. & M. Ins. Co.*—Filed July 23, 1886.—Cal.

FIRE INSURANCE.—OTHER INSURANCE A CONDITION OF FORFEITURE.—INVALIDITY OF THE ADDITIONAL INSURANCE.—Where a fire insurance policy is conditioned that it shall

be void if other or addditional insurance be taken, the condition is broken if other insurance be taken, although the additional insurance be void, yet the taking of it by the assured voids the first policy..—*Phoenix Ins. C.* v. *Lamar.*—Filed May 25, 1886.—Ind.

FRAUDULENT REPRESENTATIONS.—RECOVERY OF MONEY PAID.—ACTION ON THE CASE.—Where a party seeking to buy the interest of several heirs agreed with one of them to pay a certain sum for a conveyance from all the heirs the money was paid and conveyance made by all but one of the heirs who was unknown to the grantee, and who afterwards eompelled payment for his interest. In an action to recover the amount so paid, *held* that an action for deceit was the remedy; that assumpsit would not lie. —*King* v. *Hoxie.*—Filed June 26, 1886.—Maine.

GAMBLING HOUSES.—RENTING PROPERTY FOR THAT PURPOSE.—INDICTMENT.—In an indictment for renting property to be used for gambling purposes, it is not necessary that the name of the lessee appear in the indictment. The court say, "Under the statute it is the renting of the room or building 'to be used or occupied for gaming', which constitutes the offense."—*Kleespies* v. *State.*—Filed May 22, 1886—Ind.

GRAVEL ROADS.—PROCEEDINGS TO ESTABLISH.—IRREGULARITY OF PROCEEDINGS OF THE BOARD.—In appointing viewers to locate and determine the necessity and utility of a gravel road, when the board has acquired jurisdiction, subesequent slight irregularities will not vitiate the proceedings. Where commissioners are appointed and ordered to report at a certain time, failing to do so, the board may extend the time and again order a report to be made.—*Black* v. *Thompson.* —Filed May 22, 1886.—Ind.

GUARDIAN'S SALE.—AGREEMENT TO ABSTAIN FROM BIDDING.—LIABILITY OF WRONGFUL PURCHASER.—Where one desiring to purchase at judicial sale agrees to forbear and not bid, if another bidder will convey to him at a slight advance over the price paid, the sale under such circumstances is void. The purchaser obtaining possession under such a sale is liable to a charge for use and occupation.—*Devine* v. *Harkness.*—Filed May 15, 1886.—Ill.

GUARANTY.—PRESIDENT OF A CORPORATION GUARANTEEING THE COMPANY'S DRAFT. —CONDITION PRECEDENT.—Where the president of a corporation delivered the draft of the corporation, to the treasurer, together with his guaranty of the draft, on condition that another party sign the same as guarantor before it be used, and the treasurer transfers the draft without obtaining the signature of the party, the president is discharged from liability as guarantor, the assignee having knowledge of the condition of the presidents guaranty.—*Savings Bank* v. *Boreman.*—Filed May 12, 1886.—Ill.

HIGHWAYS.—ABANDONMENT BY TPE PUBLIC.—OBSTRUCTION OF BY ADJACENT LANDOWNERS.—Where adjacent landowners have extended their inclosure so as to obsruct a highway and it has been acquiesced in by the public for over 20 years, no action can be maintained against the owners for obstruction. An abandonment by the public will be presumed.—*Hamilton* v. *Stale.*—Filed May 18, 1886.—Ind.

HIGHWAYS.—PROCEEDINGS OF THE COUNTY COURT IN ESTABLISHING.—PRESUMPTION AS TO REGULARITY.—The proceedings of the county court in establishing highways, will be presumed to be regular, in the absence of positive evidence to the contrary. Where a road-way was established across a lot owned by a church-society with the consent of the stewards, and tacitly concurred in by the church for over 20 years, the church-society is stopped from denying the authority of its stewards in the matter.—*French Ex'r* v. *Town of Barre.*—Filed Aug. 28, 1886.—Vt.

HUSBAND AND WIFE.—REFUSAL TO SUPPORT.—GROUND FOR DIVORCE.—In an action for a divorce by the wife on the ground of non-support, in considering the husband's pecuniary ability to render her support, his present financial status is to be considered and not his ability to make or acquire money.—*Farnsworth* v. *Farnsworth.*—Filed Aug. 9, 1886.—Vt.

HUSBAND AND WIFE.—TEMPORARY ALIMONY AND COUNSEL FEES IN PROSECUTING AN APPEAL.—In an action for divorce it is within the power of the trial court to make an order for the payment of counsel fees for the wife by the husband, and where the wife takes an appeal the trial court may order the payment of counsel fees for that purpose also.—*Ex Parte Winter.*—Filed July 30, 1886.—Cal.

HUSBAND AND WIFE.—ACTION FOR PERMANENT SUPPORT, PENDING AN APPEAL FROM AN ORDER FOR PAYMENT OF COUNSEL FEES.—Where an action of divorce is pending and also an action by the wife for permanent support from her husband, and the husband has taken an appeal from an order of the court directing the payment of cousel-fee by the husband for the wife, the court may refuse to proceed with the trial of the action for permanent support pending the appeal. *Winter* v. *Superior Court.*—Filed July 30, 1886.—Cal.

INDICTMENT.—VARIANCE.— OMISSION OF A WORD IN RECITATION OF AN INSTRUMENT.—Where an instrument is recited in an indictment and a word in the instrument is omitted in the recitation, or a word recited is not found in the instrument, if the change or omission does not alter the signification the variance is immaterial.—*People* v. *Phillips.*—Filed June 25, 1886.—Cal.

INJUNCTION.—DELAYING THE REMOVAL OF PROPERTY.—MEASURE OF DAMAGES.—Where a party about to remove a mill was enjoined and the work of removal delayed and finally the injunction was dissolved, *Held* that the measure of damages was the rental value of a mill of equal capacity to which should be added the necessary expence of a watchman and the wages of the manager of the mill, who during the delay was deprived of employment.—*Wood* v. *White.*—Filed July 15, 1886.—Md.

INSOLVENCY.—ASSIGNEE REMOVED AND RECEIVER APPOINTED.—ACTION BY RECEIVER ON ASSIGNEE'S BOND.—Where an assignment has been made and subsequently the assignee is removed and a receiver appointed, the receiver may maintain an action on the assignee's bond. The bond runs to the state and any creditor may, with leave of the court, prosecute upon the bond, and the receiver representing the creditors, may do so.—*Prosser* v. *Hartley.*—Filed July 1, 1886.—Minn.

INSOLVENCY—CREDITOR'S PETITION FOR.—THE NUMBER OF PETITIONERS REQUIRED.—In a petition of insolvency not less than five creditors must join. It is not necessary that the signature of a firm should be signed by the individual members of the firm, but in the petition, the debt must be shown with the same particularity as the cause of action in a complaint.—*In Re-Russell.*—Filed July 13, 1886.—Cal.

INSTRUCTIONS.—MISSTATEMENT OF AN ADMISSION.—NEW TRIAL.—In an action by an employe to recover for wages claimed under an agreement the judge in instructing the jury misstated a fact admitted, and his attention being called to it, he neglected or refused to correct it. *Held* that as the fact misstated was material to the issue, the judge erred and the exceptions are sustained.—*Palmer* v. *Thomas.*—Filed Aug. 5, 1886.—Me.

INTOXICATING LIQUOR.—SEARCH OF ISES AND SEIZURE IN THE NIGHT-TIME.—The statute provides that "To authorize the search of a dwelling-house in the night-time, the magistrate must be satisfied that it is necessary to prevent the escape or removal of such person or property, and must, in his warrant, expressly require it." Where such

a seizure has been made the respondent should ask the court to instruct the jury as to the effect of such seizure. He cannot take advantage of a wrongful seizure on motion in arrest of judgment.—*State* v. *McGowan.* —Filed Aug. 5, 1886.—Me.

INSTRUCTIONS.—CURING MISLEADING INSTRUCTIONS.—Where instructions have been given which might properly be construed as one-sided or misleading, and they are followed by special instructions, stating that they are not to regard any instructions given as intimating an opinion of the court as to what the facts are, such special instruction cures the former.—*C. & N. W. Ry. Co.* v. *Snyder.*—Filed June 12, 1886.—Ill.

JOINT TENANTS.—RIGHT TO USE LANDS.—EXECUTION OF TRUSTS.—One joint tenant occupying the land cannot be charged by the other with rent unless the latter forbear after a demand for joint occupancy. In equity, that which a trustee ought to have done, will be considered as having been done.—*Sailer* v. *Sailer.*—Filed July 19, 1886.—N. J.

JOINT TENANCY.—DOWER.—COMMON LAW RULE.—By the common law the wife has no title to dower in lands held by her husband as joint tenant. This arises from the fact, that the estate of each tenant may be defeated by his death in the lifetime of the other joint tenant or tenants.—*Babbit* v. *Day.*—Filed July 14, 1886.—N. J.

JOINT STOCK COMPANY.—ACTION IN THE NAME OF PRESIDENT.—STIPULATION FOR THE PURPOSE OF THE TRIAL.—By an enactment of 1849 it was provided that a joint stock company, *consisting of seven or more shareholders*, might be sued in the name of the president or treasnrer. In this action defendants, attorney stipulated, for the purpose of the trial, that the *Courier Company* was a joint stock association. Afterwards upon moving for a non-suit on the ground that the company did not consist of seven shareholders, it is *held that* its stipulation estops such assertion in this trial.—*Van Arman* v. *President of Courier Co.*—Filed June 1, 1886.—N. Y.

JUDGMENT.—WITHDRAWAL OF APPEARANCE BY ATTORNEY.—JURISDICTION.—The withdrawal of an appearance by an attorney does not put his client out of court or affect the jurisdiction of the court in the case. A foreign judgment cannot be attacked on the ground that the appearance had been withdrawn and another appearance entered without authority.—*Wilson* v. *Hillard* —Filed Feb. 8, 1886.—Pa.

JUDGMENT NOTE.—PROVIDING FOR AN ATTORNEY'S FEE.—VALIDITY OF.—In Ball v. Miller 38 Ill., 110, it is held that a judgment by confession may include an attorney's fee if the amount of the fee be fixed by the warrant, but if the warrant provides for an attorney's fee the amonnt of which may be fixed by the attorney interested, the judgment will be set aside. If it provides for a "*reasonable fee*" to be fixed by the court it is valid.—*Campbell* v. *Goddard.*—Filed June 12, 1886.—Ill.

LANDLORD AND TENANT.—TENANT AT WILL.—EJECTMENT.—Where a husband and wife occupied premises as tenants by the year, and after the death of the husband the wife continues to occupy the premises with the knowledge and without objection by the landlord, the wife is held to be a tenant at will, and ejectment will not lie without a demand being first made.—*Perkins* v. *Perkins.*—Filed April 24, 1886.—Conn.

LEASE.—BREACH OF COVENANT FOR QUIET ENJOYMENT.—MEASURE OF DAMAGES.—Where a lessor covenants in a lease to give the lessee quiet enjoyment of the premises, it is implied that the lessor had the right to demise the premises. The lessee being evicted the measure of damages to which he is entitled, are the actual damages sustained and expenses incurred in endeavoring to defend his possession.—*McAllister* v. *Sanders.*—Filed June 29, 1886.—Cal.

LEASEHOLD ESTATES—TRANSFER OF.—STATUTE OF FRAUDS.—A contract for the sale of a leasehold estate is within the statute of frauds, although technically only a chattel interest. The omission in the statute of the words "or any interest in or concerning them" does not change its meaning.—*Potter* v. *Arnold.*—Filed ———, 1886.—R. I.

LIFE INSURANCE.—MUTUAL BENEFIT SOCIETIES—LIABILITY EXTENDS TO THE ASSIGNS OF ASSURED.—Where a mutual benefit association, by its by-laws, directed that benefits be extended to the family of an assignee of an assured member, it is *held* that there is nothing in the statute inconsistent therewith and the society is liable under such assignment.—*Massey* v. *Mutual Relief Society.*—Filed June 1, 1886.—N. Y.

LIFE ESTATE.—ADVERSE POSSESSION—WHEN TITLE BECOMES COMPLETE.—Where one who is tenant per *Autre vie* conveys his interest and the grantee continues in possession after the termination of the life on which the estate depended, his holding is adverse to the reversioner, and possession and payment of taxes for a period of twenty years gives him an absolute title.—*Safford* v. *Stubbs.*—Filed Jnne 11, 1886.—Ill.

LOCATION OF OYSTER BEDS.—A PERSONAL PRIVILEGE.—MAY BE REVOKED AT THE OPTION OF THE LEGISLATURE.—The grant of the privilege of locating an oyster bed, is simply a personal privilege and has no elements of a patent, and may be revoked at the pleasure of the legislature. Such a privilege is not inheritable or assignable.—*Hess* v. *Muir.*—Filed June 14, 1886.—Md.

LUNACY.—WANT OF MENTAL CAPACITY BY BEING DEAF AND DUMB.—One who is deaf and dumb from infancy is presumed in law to be an idiot. In a proceeding upon a writ *de lunatico inquirendo* it is not necessary to establish lunacy, but simply that the party is incapable of managing his own affairs. One deaf and dumb, although not a lunatic in the popular sense, may be so declared and a conservator appointed.—*In Re Lunacy of Perrine.*—Filed Aug. 24, 1886.—N. J.

MALICIOUS PROSECUTION. — EXCESSIVE DAMAGES.—Where a party has been arrested but not imprisoned or subjected to any hardship, and in an action for malicious prosecution, a judgment for $4000 damages was obtained. *Held* excessive and a remittitur of $3000 is ordered, or in lieu thereof, a new trial.—*Phelps* v. *Coggswell.* — Filed July 23, 1886.—Cal.

MARRIED WOMEN.—SEPARATE EARNINGS.—ACTION FOR.—When a married woman brings an action for recovery of her separate earnings, she must show that the labor in which she was engaged was for her own benefit, and that she intended her earning for her own separate use.—*Neale* v. *Hermans.*—Filed June 23, 1886.—Md.

MASTER AND SERVANT.—APPRENTICE.—ACTION FOR SERVICES RENDERED AFTER ARRIVING AT MATURITY.—Where a minor was committed to a reform school and by the institution apprenticed during his minority, having served his apprenticeship and for a time beyond, as be claimed, continued in the employ of his master, he brought an action for wages for the time in excess of his minority. *Held* that in the absence of any agreement or notice to his master that he would expect compensation, he could not recover.—*Burrows* v. *Waid.*—Filed July 10, 1886.—R. I.

MASTER AND SERVANT.—RAILROAD EMPLOYES.—RIGHT OF IMMEDIATE PAYMENT OF WAGES WHEN DISCHARGED.—Where an employe of a railway company is discharged he is entitled to payment of the wages due him upon demand, and may maintain an action for the same if not paid, unless a custom of the company to pay only on a certain day each month, has been brought to his notice during his employment. — *Thompson* v. *Minn. & St. Louis Ry. Co.*—Filed July 13, 1886.—Minn.

MECHANICS LIEN.—RIGHT OF EMPLOYE. SET OFF BY OWNER OF A CLAIM NOT GROWING OUT OF CONTRACT.—Where one employed by a contractor takes the necessary steps prescribed by statute, he may have a lien against the owner for the amount due, not exceeding the amount of the unpaid balance on the contract. Where such lien is established the owner cannot set off a claim against the contractor not growing out of the contract.—*Bullock* v. *Horn.*—Filed June 29, 1886.—Ohio.

MINING COAL.—ACT COMPELLING THE WEIGHING OF COAL AS A BASIS OF WAGES.—An act requiring the owners or operators of a coal mine to provide scales and weigh the coal and make the weight the basis of a contract for wages is unconstitutional. Such a requirement can only be enforced where the record is to be kept for a public use.—*Millett* v. *People.*—Filed June 12, 1886.—Ill.

MINERS CLAIMS.—EMPLOYES OF A LESSEE CANNOT HAVE A LIEN ON THE ESTATE OF THE LESSOR.—In an action to recover for work done in and about a mine by an employe of the lessee of a mine, it is *held* that the employe cannot have a lien on the estate of the owner or lessor of the mine. The lien, if the emplye has any, applies only to the estate of the lessee in whose employ the labor was performed.—*Hopkins* v. *Hudson.*—Filed June 25, 1886.—Ind.

MORTGAGE.—POSSESSION BY THE MORTGAGEE FOR A PERIOD OF TWENTY YEARS.—Possession by the mortgagee for a period of twenty years bars the mortgagor's right of redemption and an incautious abmission made by the mortgagee in such case will not waive his rights in the matter.—*Chapin* v. *Wright.*—Filed Aug. 19, 1886.—Vt.

MORTGAGE.—CONVEYANCE SUBJECT TO MORTGAGE—THE RELATION OF DEBTOR AND CREDITOR ESTABLISED BETWEEN CREDITOR AND GRANTEE.—Where a grantee takes land subject to an incumbrance, the title is vested basolutely in him and the relation of debtor and creditor is established between the grantee and the creditor. In an action of ejectment by the grantee as against the grantor, the latter cannot defeat the action on the ground that the former has not paid the incumbrance as agreed.—*Martin* v. *Splivalo.*—Filed May 26, 1886.—Cal.

MORTGAGE.—FORECLOSURE.—REMOVAL OF ACTION FROM STATE TO UNITED STATES COURT.—An action to foreclose a mortgage is not removeable from the state to United State Court on the ground that one of the defendants is a non-resident. Where the state court erroneously allows such application the order does not have the force of abating the suit.—*Winchell* v. *Coney.*—Filed May 7, 1886.—Conn.

MORTGAGE.—ADVERSE CLAIMANT.—PRIOR FRAUDULENT CONVEYANCE.—In an action of foreclosure, where there is an adverse claimant, the mortgagee cannot make the adverse claimant a party for the purpose of deter mining the merits of his claim, where there is no privity between the mortgagee and the claimant.—*Kinsley* v. *Scott.*—Filed Aug. 7, 1886.—Vt.

MORTGAGE.—RIGHTS OF MORTGAGEE.—MORTGAGOR MAY COMPEL AN ACCOUNT OF RENTAL VALUE.—In action to foreclose a mortgage the mortgagor may compel the mortgagee in possession to account for the rental value of the property. Personal property is a fund primarily liable for debt, and an heir or devisee has a right to have it applied in relief of land, but the mortgagee of the heir or devisee has not the right.—*Krueger* v. *Ferry.*—Filed Aug. 12, 1886.—N. J.

MUNICIPAL CORPORATIONS.—RIGHT TO CONSTRUCT DRAINS AND SEWERS.—RIGHTS OF LOT OWNERS.—A lot owner cannot restrain a city from constructing drains or sewers because it will increase the flow of water upon his lot. One owning a lot bounded in the rear by a brook, rivulet or drain, is not thereby a riparian owner and

entitled to riparian rights, and he cannot restrain the city from constructing drains so as to carry surface water into such brook or rivulet.—*Stanchfield* v. *Newton.*—Filed June 29, 1886.—Mass.

MUNICIPAL CORPORATIONS.—ASSESSMENTS FOR CONSTRUCTION OF SEWER.—City authorities about to construct, enlarge or repair a sewer, made an assessment which included the estimated expense of board-sheeting as it was impossible to determine in advance how much must be used. *Held* that the failure to solicit estimates for that part of the work, an assessment having been made to cover the same, did not render the whole assessment void.—*Cincinnati* v. *V. A. Lead Co.*—Filed April 27, 1886.—Ohio.

MUNICIPAL CORPORATION.—REMOVAL OF POLICE OFFICER.—RIGHT TO BE HEARD IN HIS OWN DEFENSE.—The police board of the city of Boston has no right to remove a police officer or member of the force without assigning a cause and giving him notice and an opportunity to be heard in his own defense.—*Ham* v. *Board of Police.*—Filed June 28, 1886.—Mass.

MUNICIPAL CORPORATION.—LIABILITY FOR INJURIES RESULTING FROM THE NEGLIGENCE OF AN INDEPENDENT CONTRACTOR.—Where a contractor undertakes work completely under his own control, for a muuicipal corporation the corporation is not liable for damages resulting from the negligence of the contractor. Negligence in leaving a ditch open, where a water pipe was about to be laid, does not make the city liable for dam ages arising therefrom.—*Susquehanna Depot* v. *Simmons.*—Filed April 12, 1886.—Pa.

MUNICIPAL CORPORATIONS.—LOCAL ASSESSMENTS. —REMEDY OF AGGRIEVED PROPERTY-HOLDER. — The remedy of a property-holder, who feels himself aggrieved by an order of council changing the grade of a street in St. Paul, or by the assessment of damages therefor, is derived from the statute and not the common law, and must be by appeal in the manner prescribed in the city charter.—*Genois* v. *St. Paul.*—Filed July 28, 1886.—Minn.

NEW TRIAL.—MOTION FOR, ON THE GROUND OF MISCONDUCT OF JUROR.—Where a new trial is sought on the ground of the misconduct of a juror, it will not be granted if the misconduct was known and no exception taken to it upon the trial.—*Pellitier* v. *Milford L. & L. Co.*—Filed June 26, 1886. —Me.

NEGLIGENCE.—PLEADING.—QUALIFICATIONS OF AN EXPERT WITNESS.—In an action for damages for injury to person or property caused by negligence of defendant, the complaint must show the absence of negligence on part of plaintiff. Where one is called as an expert witness it is within the province of the court to determine wether he is qualified to testify as an expert or not. —*Fort Wayne* v. *Coombs.*—Filed June 16, 1886.—Ind.

NEGLIGENCE.—FALL OF ELEVATOR IN A HOTEL.—LIABILITY OF OWNER.—Where an elevator in a hotel, run by water power, in perfect order and carefully managed, falls by reason of the water being shut off by the city authorities, and persons are injured thereby. *Held* that the landlord or owner is not liable for damages for the injury, he having done all that is reasonably required for the safety of passengers.—*Shattuck* v. *Rand.*—Filed May 27, 1886.—Mass.

NEGLIGENCE.—THE RUNING OF AN AFRIGHTENED HORSE.—INJURY TO GOODS ON SIDEWALK.—Where a horse became frightened and ran away and caused injury to goods on the sidewalk, the fact of goods being allowed to remain on the sidewalk cannot be given as evidence of contributory negligence on the part of the owner of the goods. The presumtion is that the owner of the horse was negligent in allowing the horse to run away.—*Gannon* v. *Wilson.*—Filed Feb. 8, 1886.—Pa.

PRINCIPAL AND SURETY—WHEN AN EXTENSION OF TIME WILL DISCHARGE SURETY.—An extension for an indefinite period, or simply a forbearance to sue for an indefinite time, will not release a surety. The extension must be for a definite time. The court says, "It is settled by our decisions that an extension of time to the principal which will release and discharge the sureties, must be for a definite period of time, and not a mere forbearance to sue for an indefinite time, however long it may be continued."—*Beach* v. *Zimmerman*.—Filed May 25, 1886.—Ind.

PLEADINGS—EXHIBITS REQUIRED IN A CROSS-COMPLAINT.—Where a cross-complaint is based on a written instrument the writing must be made a part of the pleading unless it has been set forth in the complaint, when it may be referred to in the cross-complaint.—*Wadkins* v. *Hill*.—Filed June 1, 1886.—Ind.

PROMISSORY NOTE—GIVEN TO COMPOUND A FELONY—ILLEGAL AND VOID—Where one is charged with larceny or embezzlement of property, and a promissory note is given in settlement of the same, if in any way the compounding of a felony enters into the transaction the note is void. Where the court was asked to instruct that, "If the motive of the plaintiff in giving the note was in part for the purpose of compounding a felony, he would not be entitled to recover," and the instruction refused. *Held* error.—*Haynes* v. *Rudd*.—Filed June 1, 1888.—N. Y.

PARTNERSHIP—TRANSACTION WITH ONE MEMBER OF A FIRM OUTSIDE OF BUSINESS OF THE FIRM—LIABILITY.—One partner cannot bind the firm in an outside transaction by his declarations and acts. Where one partner presented his personal check at bank and remarked that "my partner has or should have the money for this to-day, but can't get it and we want this amount." *Held* that the bank had no right upon such statement to hold the firm for money thus paid.—*Union Nat. Bank* v. *Underhill*.—Filed June 1, 1886.—N. Y.

PLEADING—ABREVIATED TERMS USED IN A CONTRACT—EXPLAINING THE MEANING OF ABREVIATIONS BY PAROL.—Where a contract was made by correspondence, whereby certain lumber and building material was ordered and sold, in which correspondence abreviations were used to designate certain items or articles and figures and characters were technically used to give dimensions, etc. *Held* that the meaning of such abreviations may be explained by parol testimony, but the party writing them or using them cannot testify to what he meant by them.—*Jaqua* v. *Witham & Anderson Co*.—Filed June 1, 1886.—Ind.

PLEADING AND EVIDENCE—DETERMINATION OF AN ADVERSE CLAIM TO REAL ESTATE.—In a complaint the plaintiff "*Claims* title in fee-simple," but upon trial did not prove any interest therein. The answer admits the *claim*, but denies that plaintiff has any interest in the property. Without further proof of title plaintiff rested and the referee dismissed the suit. *Held* that plaintiff must show that he has an interest in or title to the property or he has no standing in court.—*Herrick* v. *Churchill*.—Filed June 25, 1886.—Minn.

PLEADING—AMENDMENTS—DISCRETION OF TRIAL COURT.—The trial court may in its discretion, allow amendments of the pleading at any time during the progress of the trial, prior to judgment. When a plea of *res adjudicata* is interposed the order or judgment should be that the action abate.—*Conbrough* v. *Adams*.—Filed August 2, 1886.—Cal.

PARTNERSHIP—RECEIVER—WINDING UP PARTNERSHIP BUSINESS.—A receiver, appointed in an action to wind up a partnership business, is appointed in the interest and for the benefit of all concerned, and

in the collection of debts he may maintain an action in his own name. As an officer of the court he may be supposed to have a special interest in such debts. In any event he acts as the "trustee of an express trust," and in that capacity he may maintain an action in his own name.—*Henning, Receiver* v. *Raymond.*—Filed June 25, 1886.—Minn.

PARENT AND CHILD—EMANCIPATION OF CHILD—RIGHTS OF THE CHILD SUBSEQUENTLY.—A father may emancipate his minor children and it may be done in writing or by parol. After emancipation the father cannot claim the earnings or wages of the child, nor are they subject to the claims of the father's creditors. Of the property acquired by the emancipated child the father has no more control than a stranger.—*Francisco* v. *Benepe.*—Filed August 16, 1886.—Mon.

PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL — APPARENT AUTHORITY.—A principal is liable for the acts of his agent within the apparent scope of his authority. It matters not whether the principal intended his authority to cover the act or not, if third parties had reason to believe from the acts of the principal that the agent had authority, liability attaches.—*Griggs* v. *Selden.*—Filed Aug. 21, 1886.—Vt.

POISONING ANIMALS—DEPOSITING POISON NEAR A HIGHWAY—INDICTMENT FOR.—The statute makes it an offense to deposit certain poisons "within 200 rods of a highway, pasture, field, or other improved land, for the purpose of killing wolves, foxes, dogs or other animals." An indictment therefor, which alleges that a deposit was made in a certain field without naming its distance from any other field or improved land, or from a highway, is good on demurrer.—*State* v. *Bucknar.*—Filed August 5, 1886.—Maine.

PROMISSORY NOTE—PAYEE SIGNING HIS NAME BELOW THE MAKER'S NAME INSTEAD OF INDORSING—INSTRUCTIONS.—Where the payee of a note about to transfer it, at the request of the assignee signs his name below that of the maker, in the absence of any fraud, he is estopped from showing by parol that his contract was that of an indorser and not that of a joint maker of the note.—*Cook* v. *Brown.*—Filed July 15, 1886.—Mich.

PLEADING—UNCERTAINTIES IN PLEADING CURED BY BILL OF PARTICULARS—MAY BE REPLIED TO BY A SET-OFF.—The statute requires that, when a pleading is founded on a written instrument or an account, the original or a copy must be filed with the pleading. It is just as necessary to file the account as the written instrument. The defendant may answer any new matter and a party to an action may plead or reply a set-off or payment.—*Blount* v. *Rick.*—Filed June 26, 1886.—Ind.

PLEADING—STATEMENT OF CAUSE OF ACTION.—A complaint which alleges a promise and fails to allege a breach of the same is bad on demurrer. In an action by a real estate agent for compensation for negotiating a sale, the complaint alleges a promise of the defendant to pay the plaintiff what he should receive for the land in excess of $25,000. The defendant refused to execute the conveyance. The complaint alleges this refusal but not a breach of the promise to pay, hence no recovery can be had.—*Du Bruts* v. *Jessup.*—Filed June 28, 1886.—Cal.

PERJURY—CONCLUSION OF THE INDICTMENT—TIME AND PLACE OF THE FALSE TESTIMONY.—In an indictment for perjury, it is not absolutely necessary that the indictment shall conclude by the formal words, "and so the jurors aforesaid, upon their oaths aforesaid, do say, etc." It is sufficient to conclude as "against the peace and dignity of the State of Illinois." It is not absolutely necessary that the time, place and details of the commission of perjury be stated.—*Henderson* v. *People.*—Filed June 12, 1886.—Ill.

PATENT—PROFITS FOR THE USE OF PATENTED DEVICE—EVIDENCE.—In an action to recover for the unauthorized use of a patented device, it is not competent to show that the article manufactured under the use of the patent is no more valuable than similar competing articles, nor is it competent to show the value of the letters patent by showing what it actually sold for at Sheriff's sale.—*Freeman* v. *Freeman.*—Filed June 29, 1886.—Mass.

POOR DEBTORS—APPLICATION FOR RELIEF—ARREST AFTER EXAMINATION AND BEFORE DECISION.—Where one had made an application to take the oath for the relief of the poor debtors, and an examination had taken place but no decision rendered, an arrest pending the decision is *held* to be illegal.—*Morgan* v. *Curley.*—Filed June 29, 1886.—Mass.

PRACTICE — EQUITY — PLEADING THE STATUTE OF FRAUDS—WAIVER.—The defense of the pendency of a former suit for the same cause must be made by plea and not by answer. Where an oral contract is set up in a bill the statute of frauds must be explicity pleaded or it will be held to be waived, and such waiver will be permanent and final.—*Battell* v. *Matot.*—Filed July 18, 1886.—Vt.

PRINCIPAL AND AGENT—RATIFICATION OF AN UNAUTORIZED ACT—ONE PURCHASING GOODS IN THE NAME AND ON THE CREDIT OF ANOTHER.—Where one purchased goods in the name and on the credit of another, and the goods were shipped to the latter and a bill or invoice sent to him, it is not a ratification of the purchase even though no reply is made to the bill.—*Saville* v. *Welch.*—Filed August 18, 1886.—Vt.

PRACTICE—RENEWAL OF MOTIONS—DISCRETION OF COURT.—SETTING ASIDE JUDGMENT.—Where a motion has been made and denied it is in the discretion of the court to allow the motion to be renewed for the same purpose and the appellate court will presume the discretion to have been properly exercised until the contrary is made to appear—*Hitchock* v. *McElrath.*—Filed May 27, 1886.—Cal.

PARTNERSHIP—FILING CERTIFICATE OF PARTNERSHIP—RIGHTS OF ASSIGNEE TO SUE.—Two or more persons entering into partnership are required to file a certificate of the partnership and to publish the same and no action can be maintained by any firm, in the firm name, until they have complied with this requirement. A firm having been formed and not having complied with this requirement, and becoming insolvent make an assignment, this provision does not bar an action by the assignee.—*Wing Ho* v. *Baldwin.*—Filed July 22, 1886.—Cal.

PRIVATE WAYS—VIEWER'S REPORT—NOTICE TO OWNER OF LAND.—Where viewers are appointed to locate a private way over land and assess the damages therefor, the owner must have notice of the meeting of the viewers, and a failure to give personal notice is fatally defective in such proceedings.—*In Re Private Road.*—Filed February 15, 1886.—Pa.

POOR LAWS—MEANING OF "INHABITANT"—SETTLEMENT.—A legal settlement is attained by any one who supports himself and pays taxes for a period of six years. A minor, born of alien parents, living in the state for six years and paying taxes, becomes an inhabitant within the meaning of the statute.—*Hartford* v. *Canaan.*—Filed May 31, 1886.—Conn.

PARTITION—IMPROVEMENTS MADE BY A TENANT BY CURTESY.—A man, whose wife was one of several co-tenants, made improvements on the property,and upon partition, it is *held* that the co-tenant whose husband made improvements, is entitled to have awarded to her that portion of the property improved. Where one co-tenant

improves the whole estate, as erecting a house upon a lot, it inures to the benefit of all equally.—*Appeal of Kelsey.*—Filed May 31, 1886.—Pa.

PLEADINGS—REASONABLE INTENDMENT—AMBIGUITY.—Pleadings which are not worded with absolute precision, if they be clear in reasonable construction and intendment, are good. Where several facts are stated in one continuous paragraph, time, though alleged only once will apply to each fact stated.—*Royce* v. *Maloney.*—Filed August 9, 1886.—Vt.

PROMISSORY NOTE — PAYMENT — EVIDENCE OF.—Where the words "received in full," is written across the face of a note, the presumption is that the note was fully paid at the date of the last payment made and credited on the back of the note.—*Chapman* v. *Smoot.*—Filed June 24, 1886.—Md.

PARENT AND CHILD—COMMITMENT OF CHILD AS A VAGRANT—RIGHTS OF THE PARENT.—Where a child was committed to the custody of the overseers of the poor upon showing that it was neglected by the parents, such adjudication is not final and conclusive as to the rights of the father. Upon a proceeding on a writ of *habeas corpus*, the father may show that the cause for the commitment of the child no longer exists, and reclaim possession and control of the child.—*Farnham* v. *Pierce.*—Filed February 26, 1886.—Mass.

PERPETUITIES—CHARITIES AND CHARITABLE USES—VALIDITY OF GIFT.—A provision in a will bequeathing a certain fund in trust for the poor and needy of a certain town, to be used in the discretion of the trustees, is a valid gift and is not in conflict with the statute against perpetuities.—*Camp, Trustee* v. *Crocker, Admr.*—Filed May 31, 1886.—Conn.

PREFERRED CLAIM FOR WAGES—LABOR PERFORMED FOR THE ASSIGNEE OF A LESSEE—LIABILITY OF ASSIGNEE.—A claim for wages for labor done for the assignee of the lessee of land from which the fund was raised should not be allowed. The assignee is personally liable for work done on land under his instructions after a levy is made on the same by the sheriff—*Appeal of Roberts.*—Filed, 1886.—Pa.

RESTRICTION IN A DEED—QUIT-CLAIM DEED CONVEYING REVERSIONARY INTEREST.—Where a deed contains a provision that the erection of any building on the land or the use thereof for any purpose other than the one specified, the land shall be forfeited and revert to the grantor, it is a condition and not merely a personal covenant. Where the grantor subsequently executes a quit-claim deed to the land it destroys the condition and makes title absolute.—*Hoyt* v. *Ketcham.*—Filed June, 1886.—Conn.

REPLEVIN BOND—COSTS INCLUDED IN JUDGMENT.—Where a replevin bond is given it covers the costs of the suit.—Any costs to which the defendant may be entitled, and which the statute was intended to secure to them, must necessarily be included in the judgment rendered in his favor against the plaintiff. If the judgment is paid, the costs are paid and the defendant has all he is entitled to.—*Singer Mfg. Co.* v. *Rhodes.*—Filed June 26, 1886.—Conn.

RAILWAY COMPANIES—TAKING OF LAND BY EMINENT DOMAIN—HOW DAMAGES ARE TO BE ESTIMATED AND ASSESSED.—In condemnation proceedings where a railway appropriates land for the right of way, across a mill-pond, where the construction of the road would cause a total destruction of the water power, the assessment of damages is not to be made on the basis of a total destruction of the water privileges, if there be other sources from which a supply of water can be obtained. The actual damages under all the circumstances are to be assessed.—*I. & St. L. Ry. Co.* v. *Switzer.*—Filed June 12, 1886.—Ill.

RAILWAY EMPLOYES—LIABILITY OF COMPANY FOR INJURY RESULTING FROM IMPERFECT MACHINERY.—It is the duty of employes of a railway company to report any defects apparent in the machinery which they are called upon to use, and failing to do so they cannot charge the company with liability for injuries arising from imperfect machinery, although it is the duty of the company to provide suitable machinery.—*C. & A. Ry. Co.* v. *Bragonier.*—Filed May 16, 1886.—Ill.

RAILWAY COMPANIES—CROSSINGS OF HIGHWAYS—AUTHORITY OF RAILROAD COMMISSIONERS.—Where two highways cross a railroad track in close proximity but at two different places, and come together within a short distance after crossing, the railroad commissioners have power to cause the highways to be merged or come together before crossing the track and thus have one crossing instead of two.—*Suffield* v. *N. H. & N. R. Ry. Co.*—Filed July 22, 1886.—Conn.

RECOVERY OF POSSESSION OF LAND—PROPER REMEDY—AMENDMENT OF A BILL.—Where writs of entry have been brought for the recovery of possession of certain lands, and subsequently a bill is filed asking for the appointment of a receiver of the rents and profits, the bill cannot be amended into a bill for the recovery of the land. The reversal of a decree of the superior court, for the purpose of allowing an amendment of pleadings should only be done in case of formal defects.—*Squire, Assignee* v. *Hewlett.*—Filed May 8, 1886.—Mass.

SALE OF LIQUOR—SOLD TO THE FATHER AND DELIVERED TO A CHILD—MEANING OF STATUTE.—The statute prohibiting the sale of liquor to minors is a penal statute and must be strictly construed. Where a father purchased some liquor and it was delivered to his child in a bottle, unopened, without any intent on the part of either to evade the law, the seller cannot be prosecuted for selling or giving the liquor to the child. It is not within the meaning and intent of the statute.—*State* v. *McMahon.*—Filed Feb. 1886.—Conn.

SAVINGS BANKS—LIABILITY OF STOCKHOLDERS—NOT A PENAL LIABILITY.—The liability of stockholders in a bank, to depositors or other creditors, is a primary liability, and creditors are not bound to exhaust their remedy against the corporation before suing the stockholders individually. The liability is not a penal one.—*Queenan* v. *Palmer.*—Filed June 10, 1886.—Ill.

STATUTE IN PART UNCONSTIUTIONAL—VOID IN PART AND VALID IN PART.—A statute prohibiting the sale of intoxicating liquors on Sunday, except by druggists upon prescriptions by physicians, being part of a chapter which is unconstitutional, is not therefore void. When the parts of the statute are susceptible of being separated the part that is constitutional may be enforced whilst the other must fall.—*State* v. *Clark.*—Filed July 26, 1886.—R. I.

SURETY—ADVANTAGE GAINED BY ONE SURETY OVER THE OTHER.—Where two parties are surety and one of them by causing a sale of the principal's property and purchasing the same thereby obtains an advantage over the other, equity will place them on an equal footing before the former can demand contribution of the latter.—*Sanders* v. *Weelburg.*—Filed June 5, 1886.—Ind.

SCHOOL DIRECTORS—DUTIES OF IN DEFENDING A SUIT AGAINST THE DISTRICT.—Where a school director in entering upon the duties of his office finds a suit pending against the district it is his duty to take proper steps and make defense in behalf of his district. Where there is collusion between the plaintiff and a director and a judgment is allowed to be taken by default, such judgment is void.—*Noble* v. *School Directors.*—Filed May 14, 1886.—Ill.

SCIRE FACIAS—DEATH OF ONE DEFENDANT PENDING THE ACTION—ABATEMENT.—Where an action of *scire facias* on a judgment is pending and one defendant dies, the action as to him abates. It cannot be prosecuted as against his administrator, but may proceed as to the other defendants.—*Howard* v. *Randall*.—Filed Aug. 10, 1886.—Vt.

SURROGATE COURT—TERM OF JUDGES—ELECTION TO FILL A VACANCY—Where a vacancy occurs, by death or otherwise, in the office of surrogate, and an election is held and a judge elected to fill the vacancy he holds office for the full term of six years and not only for the unexpired term of his predecessor.—*Weller* v. *Townsend*.—Filed June 1, 1886.—N. Y.

SWAMP LANDS—TITLE PASSED BY ACT OF CONGRESS OF 1850.—The swamp lands around Beaver Lake were conveyed by the state to Dunn and Condit. Subsequently the water was drained from the lake into Kankakee river and the land covered by the lake exposed. Dunn and Condit's grantees or those holding under them claimed all the land thus uncovered. *Held* that the grant of the margin around the lake did not carry with it the bed of the lake. *State* v. *Portsmouth Savings Bank*.—Filed May 24, 1886.—Ind.

SPECIAL ASSESSMENTS—RESOLUTION OF CITY COUNCIL TO STAY PROCEEDINGS—NOTICE OF ASSESSMENT.—Where a special assessment has been made and the city council votes to stay the assessment proceedings and subsequently the proceedings are resumed notwithstanding the vote of the council, a person receiving notice of such assessment cannot ignore such notice, relying upon the vote of the council to save him harmless. In computing the period of notice in confirmation proceedings, the first day of publication should be excluded and the last day included.—*Brown* v. *City of Chicago*.—Filed May 15, 1886.—Ill.

STATUTE OF LIMITATIONS—LIVING WITHIN THE STATE, CONCEALED UNDER AN ASSUMED NAME.—If a debtor be out of the state when the right of action accrues the statutes of limitations does not begin to run until he returns to the state. Where the debtor returns to the state and remains continuously therein, although he may assume a new name for the purpose of concealment, yet the statute continues to run as against him. If the running of the statute was made to depend upon disputed testimony as to whether the debtor concealed himself fraudulently or not it would lead to great inconvenience.—*Engle* v. *Fisher*.—Filed June 1, 1886.—N. Y.

SCHOOL-DISTRICTS—ACTION TO RECOVER SALARY OF A TEACHER.—Where an order on the treasurer has been duly issued to a teacher for the payment of salary as teacher, and payment has been demanded and refused, an action may be maintained against the district for recovery of the same or a writ of *mandamus* will issue compelling the treasurer to pay the same. It is immaterial whether there are funds in the treasury or not.—*Martin* v. *Elwood et al.*—Filed June 25, 1886.—Minn.

STATUTE OF FRAUDS—PART PERFORMANCE OF ORAL CONTRACT.—An oral agreement within the statute of frauds may be taken out of the statute by part performance when one of the parties has been induced to alter his situation by reason of the agreement so that he would suffer "an unjust and unconscientious injury and loss" by the failure of the other party to perform the agreement. Such act of partial performance must have been done in reliance upon the oral agreement.—*Brown* v. *Hoag*.—Filed June 25, 1886.—Minn.

STATUTE OF LIMITATIONS—COMPOSITION—GUARANTY OF A NOTE BY THE BANKRUPT.—Where one had been adjudged a bankrupt and caused the bankruptcy proceedings to be superseded by a composition with his

creditors, to obtain the assent of one creditor, who held his note, to the terms of the composition, he guaranteed the payment of the note in full. In an action upon the note subsequently he interposes a plea of the statute of limitations. *Held* that his written guaranty on the note took it out of the statute.—*Robinson, Admr.* v. *Larrabee.*—Filed Aug. 21, 1886.—Vt.

STREET RAILWAY—ORDINANCE GRANTING THE OCCUPANCY OF A STREET UPON CONDITIONS—MANDAMUS TO COMPEL CONSTRUCTION.—A street railway company in Chicago was authorized to construct and operate its road on a certain street upon condition *inter allia* that the track be extended to a certain point as soon as such extension could be made and operated without loss to the company. In mandamus proceedings to compel the company to construct the road it answered that the road could not be extended and operated without loss. *Held* that the ordinance was valid and the company could not be compelled to construct the road immediately. —*Bliss et. al.* v. *C. W. D. Ry. Co.*—Filed May 15, 1886.—Ill.

STREET RAILWAY — CONSTRUCTION OF AGAINST THE PROTEST OF PROPERTY HOLDERS—DISCRETION OF THE COURT.—Where it is desired to build and operate a street railway on a certain street and the property owners object, *upon application* the court may appoint commissioners to determine as to the necessity or utility of the proposed road. The court cannot of its own motion act in the matter. A case must be presented as contemplated by the constitution.—*In Re 34th St. Railway Company.*—Filed June 1, 1886.—N. Y.

SIDEWALK—OBSTRUCTION OF BY DRIVING ON—ACTION FOR INJURY RECEIVED IN CONSEQUENCE.—Where a street car track is laid on a street so near the sidewalk that trucks cannot be driven or stand between the track and sidewalk, an ordinance in force allows the owner of such abutting premises to have the truck drive on the sidewalk. Where a horse thus driven on and standing on the sidewalk, a party slipped and fell under the horse and was injured and he brings an action for the injury. *Held* that the ordinance was valid and the owner was not negligent in having the horse standing upon the walk.—*Merritt* v. *Fitzgibbons.*—Filed June 1, 1886.—N. Y.

TRESPASS—RIGHT OF WAY BY PRESCRIPTION—ADVERSE USER.—In an action of trespass where the defendant sets up a right of way by prescription and adverse user, the burden of proof is on the defendant to show a right of way by prescription. In such case an adverse use begins from the time of abandonment of the highway. —*Black* v. *O'Hara.*—Filed April 24, 1886. —Conn.

TELEGRAM—CONTRACT MADE BY TELEGRAPH—WHEN CLOSED.—Where an offer of purchase was made in Boston to an agent of a firm in Providence and the agent asked that the offer stand until next day when he would telegraph the acceptance or refusal, did on the following day send a message accepting the offer. *Held* that the contract was complete at the time of sending the message and not deferred until it was delivered in Boston.—*Perry* v. *Mt. Hope Ins. Co.*—Filed July 24, 1886.—R. I.

TRADE-MARK—ARBITRARY NUMBERS MAY BE USED AS SUCH.—No one has a right to appropriate the figures 1, 2, 3, 4, etc. to their exclusive use as a trade-mark, but arbitrary numbers, as 30, 111 may be used as a trade-mark, if they are used to denote origin.—*A. S. L. Button Co.* v. *Anthony.* —Filed July 3, 1886.—R. I.

TOWN PLATS—EFFECT OF MAKING AND FILING—LEGAL TITLE VESTED IN THE MUNICIPALITY.—The effect of filing for record a town plat, is to vest the legal title in the portion devoted to streets and

alleys, in the municipal corporation to be held for the benefit of the public. If the municipal corporation is subsequently dissolved or if the streets so platted are subsequently vacated, the land, to the middle of the street reverts to the abutting owner. —*M. & H. Zink Co.* v. *City of LaSalle.*—Filed Aug. 13, 1886.—Ill.

TAXATION—STATE BOARD OF EQUALIZATION—ITS DECISION FINAL.—The decision of the state board of equalization as to fixing the value of property for the purpose of taxation, is final and cannot be reviewed and modified by the court. The court of appeals has no jurisdiction to review an order of the supreme court in denying a writ of *certiorari.*—*Mayor of New York* v. *McCarthy.*—Filed July 27, 1886.—N. Y.

TAXATION—DEDUCTION OF BONAFIDE DEBTS—NATIONAL BANK STOCKS.—The law provides that, in the assessment and taxation of what in the statute is denominated credits, the individual tax payer, as owner thereof, may deduct therefrom his *bonafide* debts. Where one is assessed as the owner of national bank stock, having no other credits or money capital, the deduction may be made from the assessment on the stocks.—*Wasson, Treas.* v. *First Nat. Bank.*—Filed June 25, 1886.—Ind.

TAXATION OF CHURCH PROPERTY—TITLE IN AN INDIVIDUAL—PROPERTY DEDICATED TO RELIGIOUS USE.—Church property held by a religious society is exempt from taxation, but church property, of which the legal title is in an individual, is not exempt, although it may have been formally dedicated as a church and be used as such.—*Swigert* v. *Anderson.*—Filed May 14, 1886.—Ill.

TITLE—PARTY WHO SETS UP A TITLE MUST SUPPORT IT—SALE UNDER A POWER. —"It is a general principle that the party who sets up a title must furnish the evidence to support it." A purchaser under a power takes at the peril of the sale being void if a material condition precedent to the exercise of the power does not exist. —*Temple* v. *Whittier.*—Filed June 12, 1886.—Ill.

TAX SALE—REDEMPTION BY A STRANGER UNDER COLOR OF AUTHORITY.—A receipt of redemption money or a return of the certificate for cancellation constitutes redemption. Any redemption shall inure to the benefit of the owner, and a stranger under color of authority may redeem.—*Houston* v. *Buer.*—Filed June 12, 1886.—Ill.

TRUST—TERMINATION OF AND CONVERSION OF TRUST FUNDS—It is a well established rule that where the purpose for which a trust is created has ceased, the trust ceases and the trust fund reverts to the creator thereof, and one paying over the trust funds to a party whose right to receive it has ceased, knowing that the fund belonged to another to whom he refuses to pay it, is guilty of a conversion of the funds. —*Solomon* v. *Sternfeld.*—Filed April 13, 1886.—N. Y.

TRIAL—PRODUCTION OF BOOKS OF ORIGINAL ENTRY—WHERE ACCOUNTS OF VARIOUS PERSONS ARE INTERMINGLED.—Where a party to an action is required to produce his books of original entry in court, if the account in question is intermingled on various pages with the account of other customers, the party may be allowed to seal up those portions of the books which do not contain any portion of the account in dispute, or he may be allowed to produce a copy of the account, verified by his affidavit, in lieu of the books.—*Pynchon* v. *Day.* —Filed May 15, 1886.—Ill.

TRUST FOR CHARITABLE USES—WHEN VOID FOR UNCERTAINTY.—Where a decedent in his will bequeathed property to a trustee "to use and appropriate for religious and charitable purposes in such sums and in such manner as will, in his judgment, best promote the cause of Christ," *held* that the trust is void for uncertainty.—*Maught* v. *Getzendaemer.*—Filed June 24, 1886.—Md.

TAX LEVY—MISTAKES AND IRREGULARITIES —LIABILITY OF COLLECTOR.—The fact that the assessment account was not kept as required by statute, or that the educational fund was not levied separately does not render the tax void or relieve the tax collector from responsibility in the handling of funds which he may have collected.—*Myers* v. *State.*—Filed June, 1886.—Md.

TROVER AND CONVERSION — ONE IN POSSESSION OF PROPERTY HAVING NO LIEN ON THE SAME.—One having the possession of the personal property of another and having incurred expense in obtaining possession of the same does not necessarily have a lien on the property. Where possession has thus been obtained and the property is unlawfully retained, it amounts to a conversion for which the wrongdoer is liable. —*Nutter* v. *Varney.*—Filed July 30, 1886. —N. H.

TAX DEED—MISTAKE IN NOTICE AND AFFIDAVIT FOR REDEMPTION.—A strict compliance with the statute as to notice for redemption must be had before the purchaser is entitled to a deed. A notice to I. Mayer is held not to be a notice to J. Mayer. If the affidavit does not contain the specified facts the deed is unauthorized and nugatory.—*Gage* v. *Mayer.*—Filed May 15, 1886.—Ill.

TAX SALE—NOTICE OF REDEMPTION— WHEN DEED MUST BE RECORDED.—The purchaser at a tax sale must comply strictly with the requirements of the statute and must make personal service, of notice of redemption, on persons in possession. Service by leaving copy of notice with another, as a business partner, is insufficient. The tax deed must be recorded within one year from the time for redemption.—*Gage* v. *Reid.*—Filed May 15, 1886.—Ill.

TAXATION—ASSESSMENT OF BRIDGES ON THE BORDER OF THE STATE.—A railway bridge built and owned by a railway company across a stream on the border of the state, is assessable as railroad track. It is not assessable by town or county authorities, but by the state board of equalization it is assessable, so much of it as lies within the jurisdiction of the state.—*Anderson* v. *C. B. & Q. Ry. Co.*—Filed May 15, 1886. —Ill.

TELEGRAPH COMPANY—FAILURE TO TRANSMIT—ACTION FOR DAMAGES CAN ONLY BE BROUGHT BY THE SENDER OF THE MESSAGE. —In the case of W. U. Tel. Co. *v.* Pendleton, 95 Ind., 12, it was *held* that only the sender of a message can maintain an action for failure of the company to transmit. Where a message is sent and delivered at its destination to the clerk or agent of the party to whom it is sent, and by him forwarded or repeated to the party at another place, for failure to deliver the repeated message the original senders only can bring an action.—*W. U. Tel. Co.* v. *Kinney.* —Filed May 20, 1886.—Ind.

TRUST—UNDUE INFLUENCE—EXECUTED TRUST—CONSIDERATION.—A consideration is not necessary to sustain an executed trust. In a bill by a devisee to set aside a deed of trust the acknowledgment of the donor, supported by the testimony of the notary who took and certified to the acknowledgment is conclusive, as against an allegation of undue influence, unless the evidence of undue influence is very clear and manifest.—*Massey* v. *Huntington.*— Filed June 12, 1886.—Ill.

TRUSTEES—BURDEN OF PROOF IN ACCOUNTING FOR TRUST FUNDS.—A trustee is held to a strict account of funds in his hands and the burden of proof is on him to show beyond every doubt a proper discharge of the trust. Where a check was made and delivered by the mother to her son and after her death the son claiming it to be a gift to him by his mother, failing to show clearly her intention to deliver it to him as a gift, he is held to account to the estate for it.—*Parker's Admr.* v. *Parker.*—Filed September 3, 1886.—N. J.

USURY—MONEY LOANED BY AN AGENT SAME AS IF LOANED BY THE PRINCIPAL.—Where one loaned money through an agent under an agreement that the agent should not charge for his services, and he loans at a rate above the legal rate of interest, and takes the excess over the legal rate as his commission, it is *held* that the loan is the act of the principal and is usurious. The agent might charge the borrower for his services in making the loan and not affect the contract.—*Avery* v. *Creigh.*—Filed July 17, 1886.—Minn.

VENDOR AND VENDEE—FAILURE OF TITLE OF VENDOR—REMEDY OF THE PURCHASER.—Where there is a failure of title of the vendor, the remedy of the vendee is to surrender, or offer to surrender possession and demand a return of purchase money paid. He cannot retain possession and refuse to pay the purchase price.—*Gates* v. *McLean.*—Filed June 23, 1886.—Cal.

VALIDITY OF DEED FRAUDULENTLY MADE—NOTICE TO GRANTEE—DEED OF ASSIGNMENT—BURDEN OF PROOF.—Where a deed is made by a grantor for the purpose of defrauding his creditors, it is void although the grantee had no notice of the fraudulent intent of the grantor, provided the grantee is not a *bonafide* purchaser for a good consideration. Where a deed of assignment is attacked by a creditor, if the deed is fair on its face, the burden of proof is on the attacking creditor.—*Farrall* v. *Farnan.*—Filed June 24, 1886.—Pa.

VENDOR AND VENDEE—CONDITIONS OF FORFEITURE OF A CONTRACT FOR SALE OF LAND—EJECTMENT.—Where one bought land on deferred payments, and in the contract was a condition that upon default in any of the payments, the vendor might declare the contract null and void. Upon default the vendor conveyed the land to another and he brought ejectment against the first purchaser. *Held* that the first purchaser was entitled to reasonable notice of the vendor's intention to declare the contract off, and in the absence of such notice ejectment could not be maintained.—*O'Connor* v. *Hughes.*—Filed July 12, 1886.—Minn.

VACATION OF DEED ON THE GROUND OF UNDUE INFLUENCE OR INCAPACITY—WHAT IS INCAPACITY.—Where it is sought to vacate a deed on the ground of mental incapacity, such a degree of mental weakness must be shown as would make it appear that the grantor did not comprehend the effect of what he was doing, or such undue influence exercised upon him that he was unable to exercise his judgment.—*Kimball* v. *Cuddy.*—Filed May 15, 1886.—Ill.

WILL—REVOCATION OF BY MARRIAGE AND SUBSEQUENT ISSUE.—A testator made a will and subsequently remarried and had children born to him; after his death the probate of his will was refused and from this order an appeal was taken. The court says, that it is a settled rule that marriage and issue amount to a revocation of a will previously made.—*Baldwin* v. *Spriggs.*—Filed June 22, 1886.—Md.

WILL—MUST BE CONSTRUED IN ACCORDANCE WITH THE WHOLE.—In the construction of a will, regard must be had to the general intent of the whole and a single paragraph inconsistent with the general intent should be disregarded.—*Phelps, Admr.* v. *Bates.*—Filed Feb. 5, 1886.—Conn.

WILL — UNSOUNDNESS OF MIND — INSTRUCTIONS—UNJUST DISPOSITION OF PROPERTY.—The fact that the disposition of property made by a testator is an unjust one, has no bearing upon the validity of the will. An instruction that if the jury believe that the testator was so diseased at the time of the execution of the will as to be of unsound mind they must find for the contestant, is error. He may have been of unsound mind and yet of sound disposing mind — *Freeman* v. *Easley.*—Filed June 12, 1886.—Ill.

WILLS—POWER OF DISPOSAL BY A LIFE TENANT—INTENTION OF THE TESTATOR.—The power of disposal given to a tenant for life is limited as a general rule to the extent of his life interest therein. If the purpose of the testator is plain and cannot be accomplished by a disposal of the life-estate, the power may be construed to extend to an absolute disposal of the land in fee. —*Kauffman* v. *Breckenridge.* —Filed June 12, 1886.—Ill.

WILL—REVOCATION BY MARRIAGE—HUSBAND A WITNESS.—It is a well established rule that marriage and subequent issue revokes a will formerly made. The will of a woman is revoked by her subsequent marriage alone. The fact that she did not know the rule of law, or that the man who subsequently marries her is a subscribing witness, does not vary the rule.—*Nutt* v. *Norton.*—Filed July 3,1886.—Mass.

WILL—RULE AGAINST PERPETUITIES—BEQUEST TO CHILDREN AND DESCENDANTS.—A bequest to trustees, their heirs and assigns forever, in trust, to be used for the benefit of testator's children and their descendants, is too remote and tending to create a perpetuity, is invalid.—*Kent* v. *Dunham.*—Filed July 6, 1886.—Mass.

WATERS AND WATER-COURSES—CONVEYANCE OF LAND BORDERING UPON A STREAM. —A deed conveying land bordering upon a stream conveys the grantor's interest therein to the center of the stream, unless it contain proper words of reservation. A canal company having the right to use the stream as a canal, upon abandoning the use of it, it reverts to the proper owner.—*Day* v. *P. Y. & C. R. Co.*—Filed June 29, 1886.—Ohio.

WATER COURSES—RIPARIAN RIGHTS—USE OF WATER FOR IRRIGATION AND DOMESTIC PURPOSES.—A riparian owner may take water from a stream for household purposes and may use it for irrigation within reasonable limits. In an action to restrain an upper ripiarian tenant from using water from a stream the complaint must allege that he has been, or is using an unreasonable quantity of water or state facts which will show the use of an unreasonable quantity, or the complaint will be bad on demurrer.—*Swift* v. *Goodrich.*—Filed June 30, 1886.—Cal.

WILL—PROBATE OF—REVOCATION OF PROBATE.—Where a petition for the revocation of the probate of a will, or to set aside all orders previously made in the case, is denied by the probate court, such order is final and is not appealable. Where the decree making distribution of an estate shows that proof was made to the satisfaction of the court that proper notice was given, it will be conclusively presumed on appeal that proper notice was given.—*Estate of Sbarboro.*—Filed July 13, 1886.—Cal.

WAREHOUSEMAN — FALSE REPRESENTATIONS AS TO SECURITY FROM DANGER BY FIRE —LIABILITY OF OWNER.—Where a warehouseman represents to customers that his warehouse is "fire proof" and that no expense has been spared in supplying protection against the spread of fire, and as a matter of fact a portion of the building described as "fire proof" is made of wood, the statement is false and the warehouseman is liable for property so stored.—*Hickey* v. *Morrell.*—Filed June 1, 1886.—N. Y.

WILL—A CONTINGENT BEQUEST.—A testator bequeathed *inter alia* as follows, "upon the death of my said son to convey said estate, in equal shares, to the wife and children of said son and their descendants, if any there be, the descendant of any child to take what the parent, if alive, would have been entitled to." Another clause provides that in the event of the death of the son, leaving no wife or children, the estate was to be held for the benefit of a certain church. *Held* that upon the death of the son, leaving a wife surviving him but no children, the whole of the estate

vested in the widow.—*Morse* v. *Trustees.*—Filed June 26, 1886.—R. I.

WILL—LEGACY IN TRUST—VESTED INTEREST.—A testator bequeathed the whole of his estate in trust for his daughter and directed that such portions be paid her as might be necessary for her support and education, and at the age of 18, or sooner if she married, the whole estate be paid to her. She never married and died at the age of 23 not having demanded the payment to her and none having been paid except what she needed for her support. *Held* that the whole estate vested in her at the age of 18.—*Weatherhead* v. *Stoddard.*—Filed Aug. 18, 1886.—Vt.

WATER-COURSES—RESTRICTION AS TO THE EXTENT OF FLOWAGE EMBRACED IN A DEED OF CONVEYANCE.—Where one conveyed to another a mill and incorporated in the deed a limitation as to the amount of flowage which grantee might have across other lands of the grantor, in an action for increased flowage the plaintiff must bring his action under the flowage act, and cannot maintain an action at common law.—*Grayham* v. *Virgin.*—Filed Aug. 5, 1886.—Maine.

WILL—TESTAMENTARY CAPACITY—QUESTION FOR DETERMINATION IN PROBATE.—In an issue *devistavit vel non* the question at issue is, whether or not the mind and memory of the testator were sufficiently sound to enable him to know and understand the business in which he was engaged, when he executed his will. In the case of Wilson *v.* Mitchell, 101 Pa., St. 495, the court clearly states the law as follows: "A man of sound mind and disposing memory is one who has a full and intelligent knowledge of the act he is engaged in, a full knowledge of the property he possesses, an intelligent perception and understanding of the disposition he desires to make of it and of the persons and objects he desires shall be the recipients of his bounty. It is not necessary that he collect all these in one review. If he understands, in detail, all that he is about, and chooses with understanding and reason between one disposition and another, it is sufficient for the making of a will. Daniel *v.* Daniel, 39 Pa., St. 191; Towney *v.* Long, 76 Pa., St. 106. If from any cause he is so enfebled in mind as to be incapable of knowing the property he possesses, of appreciating the effect of any disposition made by him of it, he is without the requisite testamentary capacity. Leech *v.* Leech, 21 Pa., St. 67."—*Shaver* v. *McCarthy, Exr.*—Filed 1886.—Pa.

NOTARIES PUBLIC—RETROACTIVE LAWS.—Sec. 16 of the act of March 13, 1858, concerning notaries public, which declares that an act done by a notary public after the expiration of his term of office shall be valid, is not retroactive. Hence, an unauthorized acknowledgment of a deed taken before the act was passed, is not cured by it. Judgment affirmed.—(White, J.)—*Bernier* v. *Becker.*

DEED TO BE DELIVERED AFTER DEATH—TO TAKE EFFECT WHEN.—When a grantor in a deed delivers the same to a third person as his deed to be delivered to the grantee at the death of the grantor, and the deed is according delivered to the grantee upon the grantor's death, the title passes to the grantee as of the date of the first delivery. Affirmed. (Boynton, C. J.)—*Ball* v. *Foreman.*

EXTRADITION OF ASSASSINS.

The International Law Conference at Cologne unanimously adopted a resolution presented by David Dudley Field, to the effect that in the extradition treaty where political crimes are excepted the provision shall be inserted that neither murder nor assassination, nor attempt assassination, as a means of effecting a change of government or redress of grievances, shall be deemed a political crime within the mean-

ing of the treaty, and that the privilege of asylum shall be denied the perpetrator of any such crime.

COURT OF CHANCERY OF NEW JERSEY.

August 24, 1886.

Beckett, Ex'r. v. *Zane and Wife.*

Bill for relief. On final hearing upon pleadings and proofs.

A. Cochran and M. P. Grey, for complainant.

R. S. Clymer, for defendants.

Runyon, Ch. This suit was brought by the executor of the will of Rachel Ward, deceased, late of Salem county, against Lavinia Zane, the daughter of the testatrix, and Horatio G. Zane, her husband. The bill states that the will was, soon after the death of the testatrix, delivered to Mrs. Zane, at her request, by the executor, who in delivering it to her acted in ignorance of his duty in the matter; that he afterwards repeatedly demanded it of the defendants, in order that he might present it for probate, but they refused to deliver it to him. It prays an answer on oath; an injunction to prevent the defendants from destroying, injuring, or altering the instrument; and that they may be required to produce it. By their answer the defendants admit that they have possession of the will; deny that they have ever refused to produce it; and allege that, on the contrary, they have, since it came to their hands, always been ready to deliver it to the complainant on request, but that he has never asked them to do so. On a motion made to dissolve the injunction, they delivered up the will in open court, and it has since been admittee to probate.

The only question to be decided is as to their liability to pay the costs of the suit. It appears, from the testimony, that the will was delivered up by the complainant to Mrs. Zane, (who was very much dissatisfied with it,) at her request, and that she so obtained it with a view of suppressing it if she could lawfully do so. She was the testatrix's only heir at law, and was her next of kin. She deposited it for safe keeping with Rev. Mr. Stultz, who kept it until October, 1884, when he returned it to her. On receiving it from him she gave it to her husband, who had control of it from that time until the bringing of this suit. It does not appear where he kept it. Mrs. Zane swears that she herself did not know. From this testimony it would seem that it was secreted by him. The complainant made three several demands for it at different periods, but without success. One of them was, he says, in October, 1884. He swears that on that occasion both Mr. and Mrs. Zane, with very strong expressions of determination, declared that the will should never be admitted to probate if they could prevent it. He testifies that another occasion was in July, 1885, and that then Mrs. Zane said she did not know who had the will, and that she did not know whether her husband did. The complainant swears that he could get no satisfactory information as to the will from either her or her husband. He is corrobated by the testimony of Adin Beckett, who was present at that conversation. Immediately after that demand the suit was brought. The preponderance of evidence is with the complainant.

The defendants must pay costs.

CIRCUIT COURT OF UNITED STATES, DISTRICT OF KANSAS,

June 9, 1886.

Chapman v. *Chapman.*

Motion to remand.

H. L. Poplin, for plaintiff.

A. Bergen, for defendant.

Brewer, J.: On motion to remand. This case presents a curious combination of causes, or supposed causes, of action. Removal was sought on the ground of citizenship. Several of the defendants are citizens of territories, and of course have no

right to a removal. It is claimed, however, that a separate controversy exists between the plaintiff and one of the defendants, and therefore that defendant can remove the entire case, she and he being citizens of different states. The petition alleges that she obtained a decree for alimony in 1858 in Ohio; that subsequently, and after a decree of divorce, her husband owning land in this state, conveyed that land to his son Charles W. Chapman, one of the defendants. He thereafter died, leaving other children, who are also made parties defendant. She says that this deed from her husband to Charles W. Chapman was made in trust, not specifying what the trust was. She also says that it was made with the intent to defraud his creditors, herself among others. And she prays that this alimony awarded to her, this decree for alimony, be declared a lien upon this tract; that the deed from her husband be adjudged void, the land sold, and out of the proceeds the alimony first paid; then that out of the fractional interest in the remainder belonging to Charles W. Chapman as one of the heirs of her husband, she be paid ten thousand dollars damages which she alleges she has sustained by reason of the nonpayment of this alimony; and that the balance be distributed among the other heirs of her husband. She further says that she obtained her divorce from her husband on the ground of his fault, and that she is entitled therefore under the Kansas statute to one-half interest in the land, which she prays may be set over to her. All these things are grouped together in one petition.

So far as the complaint for damages against Charles W. Chapman is concerned, it does not seem to me that she states any cause of action at all; and so far as the balance of the case is concerned, in it the other heirs are interested. The mere fact that she could have maintained an action against Charles W. Chapman alone does net necessarily determine the question of a separable controversy. If there was an action of tort, an assault and battery committed by two defendants, she could maintain an action against either one separately; but if she joins the two there is but a single controversy. There is not a separable controversy between her and each defendant. So here, if this conveyance was made in trust, as she says, the heirs of her husband, the grantor of that trust, are interested in the land after the trust has been performed, and interested against her claim to inherit one-half as well as to subject the land to the payment of the alimony. This is the character of her averment: that they are interested as the heirs of her husband. She has but one claim in this respect against them all. Whether as a matter of fact they are interested, whether the deed was made in trust or in fraud, cannot be determined until the testimony is presented. But upon the face of the papers there is no separable controversy between him and her, and therefore a motion to remand must be sustained.

CONTRIBUTORY NEGLIGENCE.

From a careful examination of the cases bearing upon this subject, and a review of the decisions, Mr. N. Davis Smith in the *Am. Law Register* regards the following principles of contributory negligence of persons with defective senses as settled by the decided cases:

1. The law requires ordinary care of every one.

2. It never exacts more than ordinary care.

3. Ordinary care is that care which may reasonably be expected of any one in his circumstances.

4. Person of defective senses are bound to the diligent use of such senses as they have; and if those defects are such as to deprive him of material aids to safety, which ordinary persons have, conduct may be negligent in them which would not be so in ordinary persons.

5. In all cases the question of ordinary care is for the jury.

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ACCIDENT AND MISTAKE—MAKING A DEED ABSOLUTE WHEN IT WAS INTENDED TO BE IN TRUST.—REFORMATION.—Where an obsolute deed conveying lands is made and delivered, where the intention of the parties was to convey the land in trust only, and the land is about to be seized and sold on execution as the lands of the grantee, a bill may be filed by the intended *cestui que trust* for the reformation of the deed and such reformation had.—*Sullivan* v. *Bruhling*.—Filed Sept. 21, 1886.—Wis.

APPEAL.—TAKEN BY THE ADMINISTRATOR OF A DECEASED JUDGMENT CREDITOR—One appointed special administratrix of her husband's estate made application to have judgment opened and to be allowed to defend in a case which had proceeded to judgment before her husband's death. She also prayed a stay of proceedings pending the hearing of her motion. Her motion was denied and from this order she took an appeal. On a motion to dismiss the appeal it is *held* that she had the right of appeal and the motion to dismiss is denied.—*Jefferson Co. Bank* v. *Robbins Admr.*—Filed Sept. 2, 1886.—Wis.

APPEAL FROM A JUSTICES.—DEFECTIVE RECOGNIZANCE CURED.—If an appellant from a justice's court has been prevented from perfecting his appeal by some means not his own fault beyond the time allowed, or if his recognizance is defective, he may be allowed to perfect his appeal if application be made in a reasonable time, but after a delay of nearly two years it unreasonable delay and will not be permitted.—*McElhaney* v. *Holland*.—Filed Feby. 15, 1886.—Pa.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.—REASSIGNMENT BY THE ASSIGNEE.—ATTACHMENT BY CREDITORS.—Where one is made assignee for the benefit of creditors and makes a reassignment it is void and such assignee may be removed and another appointed in his place. In the mean time pending the appointment of his successor creditors of the assignee cannot attach the property.—*Truby's Appeal*.—Filed Oct. 26, 1885.—Pa.

ATTACHMENT.——PRACTICE.——FILING A SUBSTITUTED MOTION.—WHEN A MOTION TO DISCHARGE MUST BE FILED.—A motion to have an attachment discharged must be filed within the time allowed for answer. A substituted motion is one filed in place of an original lost or destroyed. Where one filed a motion for discharge of an attachment, calling it a "substituted motion" where there never was an original motion filed, the latter is an original motion and if not filed within the time allowed for answer it is too late. If an original motion has been filed in time a substituted motion might be filed later, but an original motion out of time cannot be entertained.—*Magee* v. *Fogerty*.—Filed Aug. 16, 1886.—Montano.

APPEAL.—WHEN MAY BE TAKEN.—FILING OF TRANSCRIPT.—In an action in equity either party may appeal from a final order or decree, if they take and file a transcript in the office of the clerk of the supreme court within six months from the date of the judgment or decree from which the appeal is taken.—*Horn* v. *Miller*.—Filed Sept. 16, 1886.—Neb.

ACTION INSTITUTED BY AN ATTORNEY WITHOUT AUTHORITY.—PARTITION BY A WIDOW ENTITLED TO DOWER.—Where an attorney in this state, acting under the direction of an attorney in Pennsylvania, commenced an action for partition of lands at the instance or supposed instance of the widow who was entitled to dower in the lands, and sale of the land was ordered and made upon the subsequent motion of the widow to set aside the sale on the ground that she never authorized or knew of the action for partition, it is set aside, there being no proof of her authority to commence the action for partition. The partitioner, at all events, having only a dower interest in the lands, could not commence or maintain an action for partition. The controlling principle in partition, is that the parties shall be joint tenants or tenants in common of an estate in the lands.—*Hurste* v. *Hotaling*.—Filed Sept. 29, 1886.—Neb.

ASSIGNMENT FOR BENEFIT OF CREDITORS.—FILING OF INVENTORY.—PREFERENCE OF CREDITORS.—In an assignment for the benefit of creditors, the inventory may be filed within ten days after the assignment, and it relates back to the assignment. Where the debtor, in the assignment, reserves the right to prefer certain creditors, not named, such reservation will not render the assignment void, nor will it be held such evidence of fraud as to justify an attachment of the property if the inventory is filed within ten days as the law requires.—*Conlee Lumber Co.* v. *Ripon Lumber Co.*—Filed Sept. 21, 1886.—Wis.

APPEAL.—WRIT OF ERROR WHEN REMEDY MAY BE HAD BY MOTION IN TRIAL COURT.—Ordinarly a party aggrieved by error in a jadgment has a simple and ample remedy by motion at the trial term to bring the action forward, and to vacate, modify, or reverse the judgment complained of. In such case a writ of error will not lie.—*Abbot* v. *Renaud*.—Filed July 30, 1886.—N. H.

ATTORNEY AND COUNSELOR.—CONTRACT WITH A CLIENT.—BURDEN OF PROOF AS TO GOOD FAITH.—Where one of the parties to a contract sustains a confidential relation to the other, the burden is on the former to show good faith and that no advantage of the confidential relation was taken. Thus with an attorney and client. If however the relation of attorney and client which did exist has been abandoned and exists no longer, then this rule does not prevail.—*Tanen* v. *Pullman*.—Filed July 26, 1886.—Minn.

BANKRUPTCY. — INSTALMENTS ON CORPORATE STOCK CALLED FOR AFTER DISCHARGE. —PRINCIPAL AND SURETY.—Where one has subscribed for corporate stock and is subsequently declared a bankrupt and discharged of his debts by the court, such calls as are made on the stock after his discharge are not affected by his discharge. The demand was not provable under the bankruptcy proceedings. A judgment and payment by a surety are sufficient grounds on which to demand contribution by a co surety. —*Wyckoff* v. *Gardner*.—Filed Sept. 24, 1886. —N. J.

BILL OF REVIEW.—OPENING DECREE OF ORPHAN'S COURT.—A testator made a specific bequest in trust for the benefit of *Cestui que trust*, residing in Irelrnd. The trustees under the will set apart a mortgage for $3000, the amount of the bequest, for the purpose of satisfying the same and upon foreclosure the property did not being the amount of the mortgage. The beneficiaries filed a petition for a review of the trustee's account. *Held* that they could not have relief by such review as they were chargeable with laches in not being represented in the prior settle-

ment of the account.—*Scott's Appeal.*—Filed May 3, 1886.—Pa.

BUILDING CONTRACT.—MUST BE RECORDED.—Where a builder enters into a contract with the owner of land to erect a building thereon such contract must be recorded and if not so recorded no recovery can be had for a breach of the same. Although the contract is void as between the parties other persons furnishing materials for such building may have a lien for the same.—*Palmer* v. *White.*—Filed July 27, 1886.—Cal.

CHANGE OF VENUE.—WAIVER OF IRREGULARITIES.—SUBMISSION TO THE JURISDICTION BY THE PARTIES.—Where a change of venue has been asked and granted, the papers should be transmitted to the place of trial within twenty days, but where there is a failure to transmit them within the time allowed, and the parties subsequently appear and submit to the jurisdiction of the court, the failure to transmit the papers is cured.—*Starkweather* v. *Johnson.*—Filed Sept. 21, 1886.—Wis.

CHATTEL MORTGAGE.—CONSTRUCTIVE DELIVERY OF PROPERTY.—Where one held a chattel mortgage on property consisting of a lot of wheat and certain live stock, the mortgage containing the usual provision whereby the mortgagee might take possession of the property, and the mortgagee desiring to take possession of the wheat obtained a writing transfering the wheat to him, but still left the wheat in the possession of the mortgagor and subsequently without the consent of the mortgagor took the wheat away. *Held* that he was liable for a wrongful conversion of the wheat. — *Witherell* v. *Stewart.*—Filed Sept. 7, 1886.—Minn.

CHATTEL MOETGAGES.—IF NOT RECORDED THE PROPERTY MUST BE DELIVERED TO THE MORTGAGEE.—The mortgagee of a chattle mortgage must have the same recorded, or have the mortgaged goods delivered to him, otherwise the mortgage will not prevail against an attachment levied upon the goods by a creditor of the mortgagor.—*Citisens Bank* v. *Oldham.*—Filed Sept. 7, 1886.—Ind.

CONDEMNATION PROCEEDINGS. — WHEN THEY MAY BE ABANDONED.—When the issue as to the amount of damages to be assessed in condemnation proceedings is brought into the district court, the case shall be treated as an appeal from a justice of the peace, and the issue shall be tried *de novo* on its merits. The plaintiff in such proceedings may abandon the same at any time before judgment. If plaintiff has taken possession, it must surrender possession upon abandoning proceedings.—*Witt* v. *St. P. & N. P. Ry. Co.*—Filed July 12, 1886.—Minn.

CONDITIONAL SALE.—WHEN TITLE VESTS IN THE VENDEE.—TROVER AND CONVERSION.—Where one made a conditional sale, possession to be given on the payment of a certain amount, and upon the second payment of a given sum and secured notes for the balance of the purchase money, title was to vest in the grantee, upon making the second cash payment there was a failure to perfect the sale by delivery of the secured notes, and the property was sold to another. *Held,* that trover and conversion would not lie as a remedy for the breach of covenant to sell.—*Moorhead* v. *Scofield.*—Filed Feb. 15, 1886.—Pa.

CONTRACT.—AGREEMENT TO PAY A MORTGHGE DEBT.—ASSIGNMENT OF A MORTGAGE NOTE CARRIES WITH IT THE SECURITY.—When one agreed with a mortgagor for a valid considerationt to pay a certain mortgage note, and before payment the mortgagee transferred and assigned the note to another, *Held,* that the obligation to the mortgagee was in the nature of additional security and was incident to the mortgage, and an assignment of the mortgage and note carried the security with it. *Lahmers* v. *Schmidt.*—Filed July 14, 1886.—Minn.

CONTRACT.—ORAL CONTRACT SUPERSEDED BY A WRITTEN CONTRACT.—Where a written contract between parties is entered into, any previous oral contract relating to the

same subject matter is merged in the written contract, although the latter may not contain all the conditions in the oral contract previously made. The writing must be taken as embodying all the contract between the parties.—*Pearce* v. *McGowan.*—Filed Sept. 11, 1886.—Minn.

CONTRACT.—MORAL OBLIGATION INSUFFICIENT CONSIDERATION TO SUSTAIN A PROMISE TO PAY MONEY.—In an action against a widow to recover money loaned to her whilst under disability of coverture, which subsequent to her husband's death she promised to pay, cannot be maintained for want of consideration. An express promise only can revive a good consideration.—*Kent* v. *Rand, Admr.*—Filed July 30, 1886.—N. H.

CLOUD UPON TITLE.—BILL TO REMOVE.—SERVICE OF BILL ON A NON-RESIDENT.—In a bill to remove a cloud from title to land the defendant, living in Massachusetts, was served with a copy of the bill. Such bill is in the nature of a proceeding *in rem* and local in its character and the service of a duly attested copy of the bill and order is *held* a legal service.—*Bancroft* v. *Conant.*—Filed July 30, 1886.—N. H.

COMPLAINT AND ANSWER.—GENERAL DENIAL OF ALLEGATIONS IN COMPLAINT.—An answer denying each and every allegation in the complaint places in issue all the allegations contained therein, and when the action is to forclose a mechanic's lien, such denial places the burden of proof on the plaintiff to show all the facts necessary to the existence of such lien.—*Hassett* v. *Curtiss.*—Filed Sept. 29, 1886.—Neb.

CONTRACT.—ORAL CONTRACT SUBSEQUENTLY REDUCED TO WRITING.—ORAL CONTRACT MERGED IN THE WRITTEN.—Where a contract is reduced to writing, any preeeding oral contract regarding the same subject matter, or any negotiations preliminary to the contract, are merged in the written contract, and the writing will be *held* to embrace the whole of the contract between the parties. Where there was an oral contract for a certain kind and quality of wheat sold, and a guaranty of the kind and quality, and subsequently the contract was reduced to writing, but no guaranty was embraced in the written contract, *Held*, that the written contract superseded the oral, and the guaranty could not be enforced, as it was not within the scope of the written contract.—*Shatto* v. *Abernethy.*—Filed Oct. 1, 1886.—Minn.

CONTRACT.—AMBIGUITY.—EXPLANATION OF BY PAROL EVIDENCE.—In a building contract it was specified that "the entire walls of the building, inside and outside, are to be painted," and the question arises as to the meaning of the words used, and an expert testifies that the meaning of the words "would depend upon the conversation which was contemporaneous with the contract, it is *held* that it is competent to admit extraneous evidence to explain the ambiguity.—*Beason* v. *Kurtz.*—Filed Sept. 21. 1886.—Wis.

CLOUD UPON TITLE —SHERIFF'S SALE OF THE WIFE'S PROPERTY FOR HER HUSBAND'S DEBT.——INJUNCTION.——Where the wife's separate property is about to be sold by the sheriff for the payment of her husband's debt, upon a clear showing that the property is hers and not her husband's, she may have an injunction restraining the sheriff from proceeding with the sale, as it would cast a cloud upon her title.—*Tibbetts* v. *Fore, Assignee.*—Filed July 28, 1886.—Cal.

CONSTITUTIONAL LAW.—LOCAL OR SPECIAL LEGISLATION.—The constitution provides that the "General Assembly shall not pass any local or special law regulating the affairs of counties, or prescribing the duties and powers of officers in counties. An act passed prescribing the fees of county officers in counties having a population between 10,000 and 15,000 and not in other counties is *held* unconstitutional.—*Morrison* v. *Bachert.*—Filed April 12, 1886.—Pa.

CONSTITUTIONAL LAW.—OBLIGATIONS OF THE STATE TO HOLD INVIOLABLE THE OBLIGATIONS OF A CHARTER GRANTED.—MODIFICATION BY THE CONSTITUTION.—A charter granted to a corporation prior to the adoption of the constitution of 1874, is a contract, which the state as one of the parties thereto must hold inviolable and fulfill. Any charter since granted is subject to the reservation that the corporation shall render just compensation for any property taken, injured or destroyed by the constitution or enlargement of their works.—*Penn. Ry. Co.* v. *Duncan.*—Filed Feb. 15, 1886.—Pa.

CONSTITUTIONAL LAW.—INFAMOUS CRIME.—PROCEEDING BY INFORMATION.—A crime punishable by imprisonment for a term of years at hard labor is an infamous crime, and in proceeding against one for such crime the constitution provides that it must be by presentment and indictment by the grand jury and cannot be by information. Such proceeding by information is unconstitutional and void.—*Territory* v. *Blomberg.*—Filed Sept. 4, 1886.—Arizona.

CORPORATE STOCK.—LIEN OF CORPORATION ON STOCK FOR DEBTS OF A STOCKHOLDER.—A corporation, by plain language of the statute, has a lien on the shares of its stock owned by any one for a debt due to the corporation. Where one owed the corporation and having purchased some shares of stock, upon the stock being assigned and transferred to him the lien of the corporation attaches, and upon his selling and assigning the stock to another he cannot compel a transfer on the books of the company.—*Schmidt* v. *Barrel Co.*—Filed Sept. 11, 1886—Minn.

CORPORATIONS.—ACTION BY STOCKHOLDERS FOR AN ACCOUNTING.—Where stockholders in a corporation requested the directors to institute an action to have a receiver appointed, which request was refused, and subsequently the stockholders bring an action against the directors for conspiracy, such action will not be entertained when it appears that said stockholders did not act in good faith in the matter, and their request was based on a simulated reason.—*Bacon* v. *Irvine.*—Filed Jnly 27, 1886.—Cal.

CORPORATIONS.—WHO MAY QUESTION THE LEGAL EXISTENCE OF.—Where the law authorizes a corporation and there is an effort in good faith to organize a corporation under the law, and thereupon corporate functions are assumed and exercised, the organization becomes a corporation *de facto* and the legal existence of such corporation cannot be inquired into by any one except the state.—*North Sr.* v. *State.*—Filed Sept. 14, 1886.—Ind.

COUNTY ORDINANCE. — VIOLATION OF.—JURISDICTION IN AN ACTION FOR.—In an action for the violation of a county ordinance the justice of the peace has jurisdiction. Where such an action is commenced in a justice's court and from the judgment an appeal is taken to the district court, the record must show where the action was commenced. In such case, where an appeal was taken and from the district court an appeal was taken to the supreme court, it was alleged in the argument that the action was commenced in a justice's court, but the record did not show that fact, or how it got into the district court. *Held* that the district court had no jurisdiction and hence the supreme court could not entertain the appeal.—*Spanish Fork City* v. *Thomas.*—Filed June 22, 1886.—Utah.

CORPORATION EXCEEDING STATUTORY AUTHORITY.— ACTION OF TORT.—DAMAGES, HOW RECOVERED.—When injury accrues to property by acts of a corporation acting under a statute, no action of tort can be maintained therefor. The injured party must pursue his remedy as provided in the statute. If the statute authorizes a corporation to take and use the water of a certain pond, but prohibits it, in so doing, from raising the water above high-water mark or lowering it below low water-mark, if by exceeding the limits prescribed in the statute damages ensue to adjacent lands, the owner may

have an action of tort.—*Brickett* v. *Haverhill Aqueduct Co.*—Filed Sept. 8, 1886.—Mass.

CORPORATIONS.—TAXATION OF.—CHANGING OR EXTENDING A CHARTER.—Under the provision of the statute certain corporations are subject to taxation, and others are exempt. Where by the original charter granted the corporation is exempt from taxation, a subsequent change of the charter allowing the corporation to extend its operations does not change its charter so as to make it subject to taxation. It is like a railroad company procuring the right to extend its lines. —*State* v. *Society*, &c.—Filed Sept. 24, 1886.—N. J.

COUNTER-CLAIM.—SEVERAL DEFENDANTS IN SEVERAL ACTIONS.—Two actions were commenced by the respondent on the same day, upon two promissory notes. One note was executed by Ketchum and indorsed by Hoxie. The other was executed by Ketchum and indorsed by Logan and Spalding. In the first action defendants set up a counter-claim and the case proceeded to judgment. Upon the trial of the other case the defendants set up the same counter-claim. *Held* that being set up in the first action the co defendant is estopped from setting it up in the latter action.—*Bank of New London* v. *Ketchum.*—Filed Sept. 21, 1886.—Wis.

COVENANT IN DEED.—BREACH OF.—ACTION FOR EVICTION.—In order to maintain an action for breach of a covenant for quiet enjoyment of land, it is necessary for the plaintiff to prove that he has been evicted of his possession, or of some part of the granted premises, or has yielded the possession to a paramount title.—*Read* v. *Hollister.*—Filed Sept. 8, 1886.—Neb.

COUNTIES.—TOWNSHIP ORGANIZATION.—STATUS BETWEEN THE ELECTION AND THE PERFECTING OF THE TOWNSHIP ORGANIZATION.—Where the question of township organization has been submitted to the voters in a county, and a majority is in favor of the township organization, and the organization of the board of supervisors is delayed, *Held*, that township organization is in force, but the board of county commissioners continue to act until the board of supervisors have met and organized.—*Osgood* v. *Kinzer.* —Filed Sept. 29, 1886.—Neb.

COVENANT AGAINST INCUMBRANCES.—BREACH.—MEASURE OF DAMAGES.—In an action upon a covenant against incumbrances the measure of damages is the amount paid by the covenantee. The covenant is one of indemnity and the party recovers what he has paid with interest and no more. For a mere technical breach of the covenant only nominal damages can be recovered.—*Myers* v. *Roderick.*—Filed Oct. 5, 1885.—Pa.

COVENANTS RUNNING WITH THE LAND.—LIABILITY OF MORTGAGOR IN POSSESSION.—Covenants which run with the land attend the legal title. A mortgagor in possession, as against everybody but the mortgagee, and against him except the security of the mortgage debt, is seized of the fee in the land. He may recover possession in a real estate; may convey it by deed; and it may be levied upon for his debts. He must therefore be held liable upon all covenants running with the land.—*Trustees* v. *Streeter.*—Filed July 30, 1886.—N. H.

CREDITOR'S BILL.—DISMISSAL OF WITHOUT PREJUDICE.—ACCOUNTING.—Under the statute a judgment creditor's bill only affects land of the debtor, located in the county where the bill is filed, and where a bill is dismissed because it seeks to affect land of the debtor in another county, it may be so dismissed without prejudice. The statute requires all actions of a local nature be brought in the county where the couse of action arises.—*Krolik* v. *Bulkley.*—Filed Nov. 4, 1886.—Mich.

CROSS-BILL.—ACTION AT LAW.—UNCERTAINTY IN THE PLEADINGI - NJUNCTION.—Where an action at law is pending and a cross-bill is filed praying for a stay of pro-

ceedings in the pending action, the cross bill must allege that the action at law is still pending. The allegation that writs of attachment had been served in such action is not sufficient.—*Hecksher* v. *Frotter.*—Filed Sept. 11, 1886.—N. J.

CRIMINAL LAW.—IMPOSSIBLE DATE IN INDICTMENT.—The defendant was indicted for illegally selling liquor on the 19th day of October 18184, and in disregard of a motion to quash the indictment was convicted of the offense as charged. Upon appeal it is held (following Murphy v. State, 106 Ind. 96) that the indictment should have been quashed and the case is remanded with an order to quash the indictment. *Murphy* v. *State.*—Filed Sept. 14, 1886.—Ind.

DISORDERLY CONDUCT.—BEATING A DRUM IN THE STREETS OF A TOWN IN THE PERFORMANCE OF RELIGIOUS WORSHIP. —— A statute in force prohibits the beating a drum in the compact or deusly settled part of a town, except by command of a military officer. Persons who in their method of worship, paraded the streets and beat the drum, are held to have done so in violation of the statute and because they did it in obedience to their dictates of conscience in worship, is no defense, as the requirement of the statute is a reasonable police regulation. —*State* v. *White.*—Filed July 30, 1886.—N. H.

DEMURRER TO COMPLAINT.—AMENDED COMPLAINT.—APPEAL.—Where a complaint has been filed and a demurrer interposed and sustained with leave to amend the complaint, and plaintiff files an amended complaint and afterwards takes an appeal from the order sustaining the demurrer, *Held*, that the appeal cannot be sustained. When the amended complaint was filed the first complaint became *functus officio.*—*Hooker* v. *Village of Brandon.*—Filed Sept. 2, 1886.—Wis.

DOWER.—INCOHATE RIGHT OF.—SUBJECT TO MODIFICATION BY ACT OF LEGISLATURE.—In 1875 the legislature passed an act abolishing dower, and giving to the wife, upon the death of her husband, a life interest in the homestead and one-third in fee in any other real property of which the husband died seized. Where prior to the passage of this act a husband had conveyed lands in which convyance his wife did not join, her right of dower in such lands was incohate and was abolished by said enactment.—*Morrison* v. *Rice.*—Filed July 14, 1886.—Minn.

DIVORCE.—EVIDENCE OF ADULTRY.—DISCRIMINATION BETWEEN TRUE AND FALSE TESTIMONY BY THE JUDGE.—In an action for divorce on the ground of adultry, which is attempted to be proven by circumstances, the judge has the right to believe or disbelieve the testimony of witnesses testifying. He is not bound to accept the testimony of a witness as true, but to weigh it in the light of all the circumstances. The court says "he must look at the evidence as other men of discernment would view it, and must not allow himself to be misled."—*Fuller* v. *Fuller.* Filed Sept. 12, 1886.—N. J.

DEEDS. — DESCRIBED BY METES AND BOUNDS.—NUMBER OF ACRES MORE OR LESS. —Where land is described in a deed by specific boundaries and the number of acres, *more or less*, is stated, the statement of the quanty is construed as for the purpose of description and the description by specific boundaries governs, although the quantity be stated incorrectly.—*Wilder* v. *Davenport.* Filed Aug. 13, 1886.—Vt.

ELECTIONS.—DUTIES OF THE CANVASSING BOARD.—It is the duty of the canvassing board to correct any errors apparent on the face of the returns made by the election board. All presumptions are in favor of the correctness of the returns, and in the absence of positive proof of fraud it is the duty of the canvassing board to canvass the returns as they are made. The failure of the election board to properly add up the number of votes cast is subject to correction by

the canvassing board.—*State Ex. rel. Wood* v. *Hill.*—Filed Sept. 16, 1886.—Neb.

EQUITY.—RELATION OF CLIENT AND ATTORNEY—VACATING A DEED EXECUTED AT THE INSTANCE OF THE ATTORNEY.—Where a client who could not read or write executes a deed, conveying property to her attorney as compensation for his services, it devolves upon the attorney to show by clear proof that there was no deception or undue influence exercised in obtaining the deed. In the absence of such proof the deed will be set aside and he compelled to reconvey the property to the owner.—*Smith*, admr. v. *Hadley.*—Filed July 30, 1886.—N. H.

EQUITY.—APPEAL FROM A VICE-CHANCELLOR TO THE CHANCELLOR.—The rule conferring power on the vice-chancellor to determine questions as to the admissibility of evidence intends that such rulings shall be final and the chancellor will not review such rulings unless there appears to be special reasons for doing so. Such applications for a rehearing are in effect an appeal to the chancellor, and every consideration is opposed to the granting of them.—*Pullen* v. *Pullen.*—Filed Sept. 11, 1886.—N. J.

EQUITY JURISDICTION.—WHEN ONCE OBTAINED WILL BE RETAINED.—The court says: "It is a well settled principle of equity jurisprudence that where a court of equity has obtained jurisdiction of a cause for any purpose, it will retain it for all, and will proceed to final determination of the case, adjudicate all matters in issue, and thus avoid unnecessary litigation." A court of equity will not restrain the execution of its own decree.—*Buchanan* v. *Griggs.*—Filed Sept. 29, 1886.—Neb.

EVIDENCE.—EXPERT TESTIMONY.—TO WHAT AN EXPERT MAY TESTIFY.—In an action where the issue was negligence an expert witness was asked a hypothetical question involving the facts as claimed by defendant, and asked to state if that was the ordinary, careful and prudent manner of performing the work referred to, to which he answered "yes." *Held*, error. An expert may give an opinion on facts, but not whether one was guilty of negligence in performing certain work.—*Seliger* v. *Castian.*—Filed Sept. 21, 1886.—Wis.

EVIDENCE.—REGULARITY OF THE LEGISLATIVE PROCEEDINGS.—An act possed by the legislature must be evidenced by the record of the Journal. If the Journal does not show its passage, although it be properly certified by the presiding officer, the act will be held invalid. The presumption in favor of the certificate of the presiding officers is overthrown.—*State* v. *Poole.*—Filed Sept. 8, 1886.—Neb.

EVIDENCE.—VARIANCE.—NEW TRIAL.—In an action on a policy of insurance the plaintiff alleged in the complaint that the policy was issued on an application made and signed by him, and he testified on the trial that the application was written by defendant's agent, and that he did not know what representations the application contained. *Held*, that the admission of his testimony was error, as it was at variance with the pleadings. Defendant is entitled to a new trial.—*Menk* v. *Commercial Ins. Co.*—Filed Sept. 1, 1886.—Col.

EVIDENCE.—ADMISSIONS MADE BY AN INTERPETER.—PARTIES MAKING ADMISSION NOT UNDERSTANDING THE LANGUAGE.—"Before acquiescence in the language of others can be assumed as a concession of the truth of any particular fact, it must plainly appear that the language was heard, and the conduct understood." One testifying to admissions made to him by the defendants, his testimony is hearsay and should not be admitted.—*Territory* v. *Big Knot on Head.*—Filed Aug. 17, 1886.—Montana.

EVIDENCE.—WEIGHT OF EVIDENCE OF RECORD AS AGAINST PAROL.—When the plaintiff establishes his case by competent oral testimony, and the defense is established

by evidence of record, the weight of evidence must prevail in favor of defendant. In such a case it is not a case of conflicting evidence so much as it is a conflict of theories, one supported by oral and the other by record evidence.—*Dickinson* v. *State.*—Filed Sept 8, 1886.—Neb.

EVIDENCE IN A CRININAL ACTION.—ERROR CAUSED BY ADMISSION OF ACCUSED.—In a criminal action where testimony is wrongfully admitted against the objection of the accused to his prejudice, and he as a voluntary witness subsequently testifies to substantially the same facts, the error is cured, and he cannot complain.—*People* v. *Daniels.* Filed Aug. 28, 1886.—Cal.

EXECUTIONS.—DEBT DUE THE ESTATE BY THE EXECUTOR.—EFFECT OF INCLUDING IN INVENTORY.—Where the note of the executor is found among the assetts of the estate, and the executor in filing his inventory includes the claim evidenced by the note, he does not thereby admit the validity of the claim. The note is merely a chose in action or property of the estate on which the executor might or might not be liable.—*In Re. Estate of Divan.*—Filed Sept. 21, 1886.—Wis.

EXECUTORS AND ADMINISTRATORS.—WILL NOT PROBATED.—EQUITABLE DISPOSITION OF ESTATE.—Where a husband died bequeathing all his estate, subject to the payment of his debts, to his wife for life, and the remainder to his children, and after his death his widow takes possession of the estate and continues the business of her deceased husband, but does not probate his will, at her death having paid part of her husband's debts, in the settlement of her estate it will be assumed that "what ought to have been done was done," and that her estate shall be credited with so much of the debts of her husband as she had paid.—*Jenks*, admr. v. *Breem, excr.* Filed Sept. 8, 1886.—N. J.

EXECUTORS AND ADMINISTRATORS.—RESIGNATION OF EXECUTOR.—JUDGMENT AGAINST THE ESTATE PENDING THE APPOINTMENT OF AN EXECUTOR.—An order of the probate court accepting the resignation of an executor, is presumed to be regular and cannot be collaterally attacked. The probate court has power to revoke letters of administration for cause and appoint another, either general or special. A judgment taken against the estate of a decedent while a vacancy exists in the office of executor of the estate, is void and will not bind the heirs. —*Luco* v. *Commercial Bank.*—Filed July 30, 1886.—Cal.

EXECUTORS AND ADMINISTRATORS.—REVOCATION OF LETTERS.—APPOINTMENT OF SPECIAL ADMINISTRATOR.—The marriage of an executrix of the will of a decedent does not absolutely render her office of executrix vacant, but it renders her incompetent, and she may be removed. An executor cannot be removed summarily without being cited to appear and show cause why such removal shall not be made, and the appointment of a special administrator does not in effect work a removal of his predecessor without due course of proceeedure.—*Schroeder* v. *Superior Court.*—Filed July 30, 1886.—Cal.

EXECUTORS AND ADMINISTRATORS.—HIS TITLE TO ASSETS AN OFFICIAL ONE.—An administrator is a mere officer of the law, and although when necessary to protect the estate his title will relate back to the death of the intestate, yet his title to the estate cannot be affected by any acts of his prior to his appointment. Any other rule, says the court, would be a very dangerous one, as the widow or other person might thereby defraud both creditors and heirs.—*Wiswell*, admr. v. *Wiswell.*—Filed July 7, 1886.—Minn.

EXTRADITION.—CERTIFICATE OF THE GOVERNOR IN ISSUING A REQUISITION.— The governor, in issuing a requisition, is not required to certify that the papers presented to him are genuine, only that they are properly authenticated. The signature of the prosecuting attorney, and his affidavit, are

sufficient authentication. Where a defendant is brought into a state as a fugitive from justice after conviction and pardon, he cannot be surrendered to the authorities of another state as a fugitive, but must be allowed an opportunity to return to the state in which he is domiciled.—*Hackney* v. *Welsh.*—Filed June 26, 1886.—Ind.

FRAUDULENT CONVEYANCE.— PREFERENCE OF CREDITORS.—A debtor, although insolvent and in failing circumstances, has the right to sell any part or all of his stock, if done in good faith and without fraudulent intent, although his intent be to prefer one or more of his creditors to the exclusion of others. In this an individual trader or a partnership stand on the same footing.—*Dietrick* v. *Hutchinson.*—Filed Sept. 8, 1886.—Neb.

FRAUDULENT CONVEYANCE.— MORTGAGE FOR MORE THAN THE DEBT.—Where a chattel mortgage is made for more than the actual debt it is a badge of fraud. In such case where a son gave a chattel mortgage to his mother for $350 more than the real debt and the mortgagee had said to a third party "she knew the mortgage was drawn for more than Frank owed her but she thought it would keep his creditors off." *Held* that the mortgage was fraudulent and void as to creditors.—*Taylor* v. *Wood.*—Filed Sept. 29, 1886.—N. J.

FRAUDULENT CONVEYANCE.—ASSIGNMENT OF MORTGAGE UNRECORDED.—Where a father conveyed certain property to his minor son, for which the son made a note and mortgage to secure the same, and delivered to the father, and the father delivered the same to another as security for a debt, the son cannot plead infancy as a defense to the note or mortgage. He is held to be acting in the capacity of trustee for the father. Where a mortgagee has assigned a mortgage for a valuable consideration, and the assignment is not recorded, a subsequent deed by the mortgagor and mortgagee will not discharge the mortgage held by the assignee.—*Bridges* v. *Bidwell.*—Filed Sept. 28, 1886.—Neb.

FORECLOSURE OF MORTGAGE.— LIMITATIONS.—ADMISSION OF MORTGAGE NOTES AS EVIDENCE OF THE DEBT.—By the statute of limitations a promissory note is barred in five years from the time it is due, and a mortgage debt is barred in ten years. In an action in equity to foreclose a mortgage after the expiration of five years, and within ten, founded upon the mortgage debt and not upon the note, the note may be introduced as evidence of debt. If the action were upon the note it would be otherwise.—*Cheney* v. *Woodruff.*—Filed Sept. 22, 1886.—Neb.

GIFTS INTER VIVOS.—VALIDITY DEPENDS ON THE INTENTION OF THE DONOR.—A gift inter vivos, unless delivered by the donor with intention of giving the same absolutely, is invaled. When a valid gift is thus made and the donee redelivers the same to the donor with the intention that it shall remain the property of the donor *in case he becomes reduced to poverty, which event never happens*, is not a revocation or surrender of the original gift. The latter conditional gift does not amount to a gift *inter vivos.*—*Marston*, admr. v. *Marston.*—Filed July 30, 1886.—N. H.

HIGHWAYS.— DEDICATION OF LAND.— PUBLIC USE FOR TWENTY YEARS.—In an action to prevent the obstruction of a roadway the plaintiff claimed that the dedication to the public had been made and in some measure the way had been used by the public for over twenty years. Since the supposed dedication it was an admitted fact that the plaintiff had purchased of the owner the right of way across said street. *Held*, that the plaintiff was estopped from alleging a prior dedication of it.—*South Branch Ry. Co.* v. *Parker.*—Filed Sept. 4, 1886.—N. J.

HOMESTEAD.—EFFECT OF MORTGAGE IN WHICH THE WIFE DOES NOT JOIN.—A husband, the owner of a homestead, cannot make

a valid mortgage on his homestead without his wife joining in the same. If there be parts of a tract of land owned by him which is not embraced in the homestead, this rule does not apply to such portions of his lands. —*Swift* v. *Dewey*.—Filed Sept. 15, 1886.—Neb.

HOMESTEAD.—RIGHT OF IN COMMUNITY PROPERTY.—PART OF THE PROPERTY NOT SUBJECT TO HOMESTEAD EXEMPTION.—Where a declaration of homestead is filed subsequent to the execution of a deed of trust, the claim is valid to the extent of any such interest remaining after the trust is satisfied. A claim of homestead is not invalidated because a part of the premises thus claimed is not subject to such homestead exemption. —*King* v. *Goetz and wife*.—Filed July 28, 1886.—Cal.

HOMICIDE.—SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE.—SEVERAL COUNTS.—In establishing a homicide by circumstantial evidence, it is not sufficient that the evidence establishes a strong probability of the guilt of the defendant. Assuming all the facts to be true which the evidence tends to establish, yet if the circumstances may be accounted for on any hypothesis consistent with the innocence of the defendant, the proof is insufficient to convict. The evidence when taken together must be conciusive.—*Casey* v. *State*.—Filed Sept. 22, 1886.—Neb.

HOMICIDE.— JUSTIFIABLE.— DEFENDANT TECHNICALLY A TRESPASSER.—WHEN HOMICIDE IN SELF-DEFENSE IS JUSTIFIABLE.—Where a party entered the inclosure of another, and the latter approached the former with a gun in his hand and told him to leave his premises, or he would shoot him, and the latter started to depart, and the former continued to threaten to shoot. The latter having reached his wagon picked up his gun, and shot his assailant. He was indicted, found guilty of manslaughter and sentenced to the state prison. The testimony was in some degree conflicting, and the judgment is reversed. The court say the right of self-defense does not exist when a party is in the wrong in bringing on the conflict. Still, although defendant was a trespasser technically, yet if he did not enter the inclosure with the intent, or knowing that it would bring on a conflict, he had the right of self-defense.—*State* v. *Archer*.—Filed Oct. 6, 1886.—Ioa.

HUSBAND AND WIFE.— DIVORCE.—ANSWER CHARGING WRONGFUL ACTS TO BILL CHARGING ADULTRY.—In an action for divorce the respondent is not limited to acts similar to the wrongs charged in the bill. Where the bill charges adultry the answer may set up cruelty or any wrongful act which would in itself be grounds for a divorce. In a bill charging adultry, the answer alleged acts of cruelty and an endeavor to obtain sexual intercourse with another woman, *Held*, relevant.—*Condert* v. *Condert*. —Filed Sept. 30, 1886.—N. J.

HUSBAND AND WIFE.—LIABILITY OF WIFE'S SEPARATE PROPERTY GIVEN AS SECURITY FOR HER HUSBAND'S DEBTS.—Where a husband being insolvent, and his wife executes a deed of trust conveying her separate property as security for the payment of her husband's debts, and on this ground he is granted an extension, the consideration is sufficient to support the deed. If fraud has been used to secure the conveyance, the wife must move immediately upon discovering the fraud, to rescind the conveyance or the deed will be upheld.—*Burkle* v. *Levy*.—Filed July 28, 1886.—Cal.

INTOXICATING LIQUORS.—ABATEMENT OF NUISANCE.—PLEADING.—In an action for illegally selling intoxicating liquor, the defendant replied that he had purchased the property thus occupied before the enactment of the statute under which he was being prosecuted, and that the building was erected and especially adapted to the business which was at that time legal. *Held*, that his answer was bad, as it stated a conclusion of law and not a fact. Under existing statutes the building so occupied is a

nuisance, and to deprive the owner of the use of it for that purpose is not depriving him of property without due process of law. —*McLane* v. *Leicht.*—Filed Oct. 5, 1886.—Iowa.

INDICTMENT.—VARIANCE BETWEEN THE COUNTS IN THE INDICTMENT AND THE PROOF. —Where defendant was indicted for obtaining property by false pretenses and it was charged that the property thus fraudulently obtained was one promissory note made by Samuel Purrington and the proof showed that it was a note made jointly by Samuel Purrington and Lincoln Purrington, held that there was a fatal variance between the *allegata* and *probata.*—*People* v. *Reed.*—Filed Aug. 30, 1886.—Cal.

INJUNCTION. — RESTRAINING HIGHWAY COMMISSIONERS FROM ERECTING AN EMBANKMENT. —Highway commissioners are invested with a large degree of discretion as to the proper method of erecting embankments and constructing bridges, and an injunction will not issue to restrain them in what may be alleged a trespass on real estate, unless there is very clear proof of irreparable injury about to be done.—*Thornton* v. *Roll.*—Filed Sept. 9, 1886.—Ill.

INSOLVENCY.—DISCHARGE IN ONE STATE NO BAR TO AN ACTION IN ANOTHER.—A defendant who has been discharged of his debts under the insolvent laws of Massachusetts, cannot plead such discharge in New Hampshire in an action commenced on a contract made in that state prior to the insolvency proceedings, where the plaintiff was not a party to the proceedings in Massachusetts. —*Norris* v. *Atkinson.*—Filed July 30, 1886. —N. H.

INSOLVENCY DEFINED.—PRESENT INABILITY TO LIQUIDATE LIABILITIES.—In an action to recover certain property by the plaintiff receiver on the ground that it was fraudulently conveyed by an insolvent debtor, the issue was confined to the question, "Was the debtor insolvent when the conveyance was made?" In *Bagly* v. *Schofield*, 1 Maule & S. 338, an insolvent is defined as one who is not in a condition to pay his debts in the ordinary course. In the case of *Shone* v. *Lucas*, 3 Dowl. & R. 218, it is said, "a trader is in insolvent circumstances when he is not in condition to pay his debts in the usual and ordinary course of trade. This is the meaning of the term as used in the Massachusetts Statutes, and also in the United States bankrupt act. The popular sence in which the term insolvency is used, is to express the insufficiency of the whole of the debtor's property to pay the whole of his liabilities.—*Daniels*, receiver, v. *Palmer.* —Filed July 6, 1886.—Minn.

INSOLVENCY.—REASONABLE CAUSE TO BELIEVE A DEBTOR INSOLVENT.—A party purchasing or receiving property from an insolvent debtor is bound to exercise ordinary prudence in respect to the title of the seller. In order, however, to charge notice of insolvency, it is not enough that a party has some cause to *suspect* the insolvency of the seller, but he must have some actual knowledge of facts which produce reasonable belief of his insolvency.—*Daniels*, *Rec.* v. *Pumbrota Bank.*— Filed July 6, 1886.—Minn.

INSOLVENCY.—JURISDICTION OF THE PROBATE COURT.—The probate court has jurisdiction in the first instance of questions arising under the assignment. Whether the administrators and heirs are creditors within the meaning of the statute are questions to be determined in the probate court on application to file objections or in some other made of procedure.—*Gignoux* v. *Downs.*—Filed July 30, 1886.—N. H.

INJUNCTION.—RESTRAINING A GAS COMPANY FROM LAYING PIPES IN THE STREET ON THE GROUND OF PRIVATE NUISANCE.—Where individual property is in danger of being injured by the laying of gas-pipes in the streets of a city, the owner should apply to the mayor and the council for relief, and until he has done so he cannot proceed by

information and injunction to restrain the company from proceeding on the ground of a private nuisance.—*Kenney* v. *Consumer's Gas Co.*—Filed Sept. 11, 1886.—Mass.

INSURANCE COMPANY.—DETERMINATION BY BY-LAW WHAT DIVIDENDS SHALL BE DECLARED.—An insuaance company, which enacts a by-law fixing the amount of the annual dividend which shall be declared, acts in violation of the statute, but if in declaring the dividend the company acts in accordance with the statute and ignores the by-law, its action will be legal notwithstanding the existence of the by-law. Where a company is partly stock and partly mutual, the profits of each department should be kept separate and dividends declared accordingly, based upon the profits.—*Tsaders and Mechanics Ins. Co.* v. *Brown.*—Filed Sept. 10, 1886. —Mass.

JURY.—CURING DEFECT IN THE SHERIFF'S RETURN.—SUBSTITUTING A BY-STANDER FOR ONE SUMMONED.—Where the return of the sheriff is imperfect in not showing that twelve substantial freeholders were summoned, if the record avers that the jury consisted of twelve substantial freeholders, the error or omission in the return of the sheriff is thereby cured. It is not error for the sheriff to substitute a by-stander for one of the jurors summoned but not present.—*Mullen's Appeal.*—Filed April 5, 1886.—Pa.

JUSTICE OF THE PEACE.—LIMIT OF JURISDICTION.—APPEAL.—The jurisdiction of a justice of the peace in a civil action is limited to claims of $300 or less. Where it is sought to recover property valued in the complaint at $319, or in lien of recovery of the property $299 in money and $150 damages and the costs of the action, the justice has no jurisdiction. Where such action proceeds to judgment and an appeal is taken the appellate court has no jurisdiction.—*Shealor* v. *Superior Court.*—Filed Aug. 31, 1886.—Cal.

JURISDICTION OF ORPHAN'S COURTS.—CLAIM FOR DAMAGES FOR BREACH OF A COVENANT BY DECEDENT. — The orphan's court, in the distribution of an estate, may allow a claim for damages growing out of a breach of covenant by the decedent, in his lifetime. In the case of *Kittera's Estate*, 17 Pa, st, 422, the court says, the authority of the orphan's court is established to appoint auditors to make distribution of an extate: * * * The power to decide all questions necessary to a distribution of the funds follows the power of distribution, and vests in the orphan,s court as a necessary incident. —*Guth's Appeal.*—Filed March 1, 1886.—Pa.

LACHES. — FAILURE TO PROSECUTE AN ACTION BY REASON OF FALSE REPRESENTATION OF JUDGMENT DEBTOR.—Where one obtained a judgment against a debtor and upon issuing execution no property was found on which to levy, the debtor having fraudulently transfered his property, the judgment creditor thereupon allowed the proceedings ot rest, being assured by the debtor that the transfer of his property was bona fide. The judgment having stood for fifteen years, being once revived, and the creditor having died his administrator brings an action to recover on the grounds of false representations and fradulent transfer of property, the debtor having at this time had his property reconveyed to him and the claim being outlawed. *Held* that the plaintiff's intestate was guilty of laches in not instituting supplementary proceedings and further prosecuting the action and the present action is consequently barred.—*Morrill, Aduir* v. *Madden.*—Filed Sept. 6, 1886.—Minn.

LANDLORD AND TENANT.—OMISSION IN LEASE. — REFORMATION OF. — RIGHTS OF PARTIES.—Where a lease was executed for a building to be used as a hotel and at the time of execution of the lease the building was not finished, the landlord agreed to finish certain parts of the building which he subsequently refused to do. This agreement was not incorporated in the lease. The lessee refused to occupy the building or to

pay rent for the same, and an action is brought for the rent. *Held* that the plaintiff could not recover, that the lease should be reformed in accordance with the agreement. —*Wyman* v. *Sperbeck*—Filed Sept. 21, 1886. —Wis.

LANDLORD AND TENANT.—LIABILITY OF THE LANDLORD TO REPAIR.—PREMISES OCCUPIED BY SEVERAL TENANTS.—The court says, "The rule seems to be well settled that, in the absence of any secret defect or deceit, or warrant or agreement on the part of the landlord to repair, the tenant takes the leased premises in the condition they happen to be at the time of the leasing, and that in such case the landlord is not liable to the tenant for an injury caused by the premises being out of repair during the term." Where the premises are occupied by more than one tenant, it may be that the landlord is under obligation to keep the stairs and passage ways in repair, but this obligation does not extend to the construction of new ways on a different plan.—*Cole* v. *McKey*.—Filed Sept. 21, 1886. —Wis.

LEVY.—JUSTIFYING BY OFFICER. — EVIDENCE OF DEBT FOR WHICH THE EXECUTION ISSUED.—In an action against a sheriff for wrongful seizure of property on execution, in justification by sheriff he must prove the judgment on which execution issued. Where the execution debtor had sold the property to another before levy, but had not delivered it, the sheriff, in the absence of proof of judgment, was not permitted to show that he seized the goods in the possession of the judgment debtor, and the sale by the debtor to another being admitted the parties are in the same attitude as if the purchaser had possession of the goods and the sheriff must proceed as if attacking the sale on the ground of fraud —*Ford* v. *McMaster*.—Filed Aug. 16, 1886.—Montana.

LIENS ON MINES.–ASSIGNMENT OF CLAIMS. —CLAIM OF A SUPERINTENDENT OF THE MINE —One having a claim for labor performed in and about a mine, and having given orders on the owners for what he claims, is not estopped thereby from having a lien for his claim if the orders have not been accepted by the owner, provided he has the orders reassigned back to him before filing his lien. Any one having performed labor in a mine may have a lien therefor.—*Palmer* v. *Nucos Min. Co.*—Filed Sept. 9, 1886.—Cal.

LIBEL.—WORDS IMPUTING UNCHASTITY. —ACTIONABLE WORDS.—Where in an action for slander the complaint charged that defendant said of the plaintiff that "she was a bad woman, that you had better have nothing to do with her case, as it is a very bad one; that she had not lived with her husband for two years previous to his death, and that she was the cause of her husband's death; that she had driven him to drinking." *Held* that these words constituted a cause of action. In speaking defamatory words the speaker is accountable for the import of the words as they would be naturally undertsood. *Dorland* v. *Patterson* 23 Wend. 422. In the case of Vanderlip v. Roe 23 Pa. St. 84 the words "she is a bad character — a loose character", were held to impute unchastity. —*Kedrolivansky* v. *Niebaum*.—Filed July 27, 1886.—Cal.

LIFE INSURANCE.—ASSIGNMENT OF CERTIFICATE FOR THE SUPPORT OF AN ILLEGITIMATE CHILD.—Where a man, having a wife and children by her, was the father of an illegimate child, procured a policy of insurance on his life for $1000 and assigned and delivered it to the mother of his illegitimate child for the child's benefit, and after his death the company pay the amount of the policy into court to be paid out to the equitable owner. It is *held* that the mother of the illegitimate child is entitled to the funds as against the administrator and heirs of his estate.—*Brown, Admr* v. *Mansus*.—Filed July 30, 1886.—N. H.

LOGS AND LOGGING.—FLOATING LOGS IN THE MISSISSIPPI RIVER.—It is a common

right of any one engaged in logging in the Mississippi river to run other logs which become intermingled with his, until he arrives at a convenient point for separating them, and may demand reasonable compensation of the owner of such logs, for having run them. This he may do although before separating the logs he has driven them farther down the river than the owner desired them to be taken.—*Chesley* v. *DeGraff*.—Filed July 12, 1886.—Minn.

MASTER AND SERVANT.—ONE EMPLOYED IN HANDLING DISABLED CARS.—RISK ASSUMED.—Where one employed as brakeman for the special purpose of removing and handling disabled cars and placing them upon the repair track, he assumes the risk incident to his work and for injury through the negligence of a co-employe or by reason of the imperfect condition of the cars he cannot recover of the company.—*Kelley, Admr* v. *C. St. P. M. & O. Ry. Co.*—Filed Sept. 6, 1886.—Minn.

MORTGAGE.— NON-NEGOTIABLE BOND.—ASSIGNMENT OF.—RIGHTS OF PARTIES.—One who purchases a non-negotiable bond secured by mortgage, takes it subject to any equitable set-off between the original parties. The bond embraces the contract which governs coupons attached. If the bond is non-negotiable, the coupons are likewise non-negotiable and subject to equities between the original parties.—*Richardson* v. *Woodruff*.—Filed Sept. 29, 1886.—Neb.

MORTGAGE. — LANDS SUBDIVIDED INTO CITY LOTS.—SUBSEQUENT FORECLOSURE AND SALE.—Where lands subject to a mortgage were platted and subdivided into city lots in which the mortgugee joined, and upon subsequent default of mortgagor, the mortgage was foreclosed and the land sold in blocks, it is *held* that no exception could be taken to the sale on the ground that is was not sold in smaller quantities or separate lots. After the expiration of the time for redemption an action to set aside the sale would not lie.—*Abbott* v. *Peck*.—Filed Sept. 7, 1886.—Minn.

MORTGAGE.—FORECLOSURE.—SHAM ANSWER STRIKEN FROM THE RECORD.—Where the complaint in an action to foreclose a mortgage recites with precision where the record of the assignment of the mortgage may be found, and defendant answered that he had no knowledge or information which would lead him to believe there was any such assignment, such answer is declared to be a sham and ordered stricken from the record.—*Wheeton* v. *Briggs*.—Filed July 20, 1886.—Minn.

MUNICIPAL CORPORATION.—FIXING OF SALARY OF OFFICERS.—INHIBITION OF STATUTE.—The statute provides that the salary of officers of a municipal corporation shall not be increased or diminished during their term of office. Where at the time of the election of city officers no ordinance had been passed fixing the salary of such officers, it is competent for the city council subsequently to pass such an ordinance. Such action is not within the inhibition of the statute denying the power to increase or diminish the salary of such officers pending their term of office.—*Wheelock* v. *McDowell*.—Filed Sept. 22, 1886.—Neb.

MUNICIPAL CORPORATION.--ACTION AGAINST A CITY WHOSE CHARTER PROVIDES THAT NO ACTION SHALL BE MAINTAINED UNTIL 40 DAYS AFTER THE CLAIM HAS BEEN PRESENTED TO THE COUNCIL.—-Where the city charter provides that "no action to recover or enforce any claim against the city shall be brought until the expiration of forty days after the claim shall have been presented to the common council in the manner and form provided", it is *held* that this was a condition precedent and must be set up in the complaint. t is said in Howland v. Edmond, 24, N. Y. 307, that if the defendant's liability depends on a condition precedent such performance must be averred and proved or the action cannot be maintained.—*Reinig* v. *City of Buffalo*.—Filed April 27, 1886.—N. Y.

NEGLIGENCE.—CROSSING RAILWAY TRACK ON A HIGHWAY.—In crossing or approaching

a crossing of a railway, it is the duty of a traveller to stop before crossing and listen for approaching trains, and one who fails to do so and is injured, is guilty of contributory negligence in such degree as to bar recovery of damages therefore.—*Chase, Admr* v. *Maine Cent. Ry. Co.*—Filed Sept. 20, 1886.—Me.

NEGLIGENCE.—INJURY TO AN EMPLOYE FROM LEAVING MACHINERY EXPOSED.—QUESTION FOR THE JURY.—Where one was employed in a saw-mill in removing slabs from the saw ,certain machinery was left exposed from which the employer was injured. In an action for damages for the injury the question of negligence of the owner, and the question of contributory negligence by the employe was properly submitted to the jury. *Barbo* v. *Bassett.*—Filed Sept. 6, 1886.—Minn.

NEGLIGENCE.—UNSUITABLE STATIONS ON A RAILWAY.—EVIDENCE.—In an action for personal injury sustained by reason of insufficient depot accommodations on a railway it was shown that defendant, by direction of the conductor, had alighted from the rear car of the train where she had to decend three feet from the car step to the ground and was injured in so doing. *Held* that the company was guilty of negligence in not furnishing better depot facilities for passengers.—*Bullard* v. *B. & M. R. R. Co.*—Filed July 30, 1886.—N. H.

NEGLIGENCE.—DUMP CARS RUN IN THE STREET OF A CITY.—DUTY OF CONTRACTOR.—Where a contractor engaged in grading and filling a street in a city, conveys dirt upon dump cars in a lawful manner, the measure of his obligation and duty was to use reasonable care to avoid injury to any one, and that he was not bound to employ watchmen to guard and keep people and children out of danger by reason of the running of his dump cars. Where children or others were observed in danger he was bound to use due diligence to avoid injury to them.—*Emerson, admr.* v. *Peteler.*—Filed Sept. 6. 1886.—Minn.

NEGLIGENCE.—CONTRIBUTORY NEGLIGENCE BY DRIVER OF HRIVATE CARRIAGE.—INJURY TO A PASSENGER.—Where one who was riding in a private carriage upon the invitation of the owner, is injured by the negligence of a city, or by reason of a defect in street negligently permitted to exist, he may recover for the injury, although the driver of the carriage was guilty of negligence. The plaintiff himself being without fault and having no control of the driver, he may not be charged with contributory negligence.—*Follman* v. *Mankato.*—Filed Oct. 1, 1886. Minn.

NEW TRIAL.—NEWLY DISCOVERED EVIDENCE.—BILL OF EXCEPTIONS.—No court can intellegently determine the merits of a motion for a new trial for newly discovered evidence without knowing what testimony was given on the trial. Hence the mandate that in such a case a bill of exceptions must be settled. The circuit court, having before it the judges notes may in its discretion, hear a motion for a new trial on the grounds of newly discovered evidence, but on appeal a bill of exceptions must be filed.—*Carroll* v. *Haughgartner.*—Filed Sept. 21, 1886.—Wis.

NOTE MADE ON SUNDAY.—ERASING THE NAME OF PAYEE AND INSERTING ANOTHER.—MATERIAL ALTERATION.—Where a promissory note is signed on Sunday, but not delivered until a week day following, it is valid. The contract embraced in the note is made when the note is delivered, not when it was signed. Where a note was made jointly by two parties, and after being signed the name of the payee was changed, without the knowledge of one of the makers, *Held*, that as to the maker who had no knowledge of the change he was thereby discharged from liability on the note. The alteration was a material one and voided the note.—*Bell* v. *Mahin.*—Filed Oct. 5, 1886.—Iowa.

NOVATION.—ASSIGNMENT OF WAGES.—ACCEPTANCE.—Where an employe makes an assignment of future wages and the assignee presents the assignment to the em-

ployer who accepts and says he will pay when the wages are earned, there is a novation of parties and debt, the assignment being thereby completed, and an attachment will not lie against the employe by a creditor, levied upon the fund thus assigned. *Clough* v. *Giles.*—Filed July 30, 1886.—N. H.

OVERFLOW OF LAND.—DESCRIPTION OF LAND OVERFLOWED.—SUFFICIENCY OF DESCRIPTION.—In an action for damages for causing the water to overflow certain land by the erection of a dam, it is sufficient to describe the land by the government subdivisions excepting therefrom certain parts sold to a certain party. It is not necessary to state in the complaint the dimensions of the dam erected or how much above the proper hight it has been erected.—*Lake* v. *Loysen.* —Filed Sept. 21, 1886.—Wis.

PARTNERSHIP.—LIABILITY OF AN INFANT MEMBER OF THE FIRM.—Where one of the members of a partnership firm is an infant and the firm becomes insolvent, in an action to recover of the individual members of the firm for goods sold and delivered the infant member may interpose a plea of infancy as to his individual liability.—*Folds et al.* v. *Allardt.*—Filed Sept. 6, 1886.—Minn.

PARTITION.—APPOINTMENT OF AUDITOR. —EMPLOYMENT OF COUNSEL BY A TRUSTEE. —In an action for partition it is discretionary with the court to appoint an auditor or not before confirming the sale. Where a trustee has a right to employ counsel in matters pertaining to the trust, he has a right to charge the trust estate with the expenses of such counsel.—*Hummel's Appeal.* —Filed Feb. 6, 1886.—Pe.

PARTNERSHIP.—ACTION BY PARTNERS ON A MATTER NOT PARTAINING TO PARTNERSHIP BUSINESS.—Where three persons doing business as partners bring an action for recovery of a claim which is not a matter of partnership business and in the complaint they are described as partners, exception cannot be taken to the fact that their partnership was not legally formed. The description of the partnership in the complaint is mere surplussage.—*Lee et al.* v. *Orr.*— Filed Aug. 12, 1886.—Cal.

PARTIAL ASSIGNMENT OF A CLAIM.—NOT IN FRAUD OF INSOLVENT LAW.—When one had contracted to erect a building, and before completion found himself unable to complete it for want of funds, made an assignment of the sum of $600 apart of the sum which would be due him when the building should be completed, and the assignee thereupon advanced him money to complete the building, *Held*, that such partial assignment was not in violation of the insolvent law, and was valid.—*James* v. *City of Newton.*—Filed Sept. 8, 1886.—Mass.

PLEADING.—GENERAL DENIAL IS THE SAME IN EFFECT AS A SPECIFIC DENIAL OF EACH CHARGE.—A general denial, in an answer, of each and every of the allegations in the complaint is the same in effect as a specific denial. A negative pregnant is one that implies an affirmative and cannot occur in a general denial. A general denial has a scope as wide as the complaint and puts in issue all facts alleged in the complaint.— *Stone* v. *Quaale.*—Filed Oct. 5, 1886.— Minn.

PLEADING.—ACTION AGAINST A SCHOOL DISTRICT.—DEFECT CURED BY VERDICT.— Where a written instrument is the foundation of an action, it should be filed with the complaint, but if not filed, and the case proceeds without objection to verdict and judgment, the failure to file is cured by the verdict. In an action to recover the wages of a school teacher, it is sufficient to allege that she performed all and singular her duties according to said contract.—*Owen School Dist.* v. *Hay.*—Filed Sept. 16, 1886. —Ind.

PLEADINGS.—WHEN AMENDMENTS WILL BE ALLOWED.—When it is necessary that pleadings be amended, in order that the party may prove any material matter in his

case an amendment should be allowed at any time before judgment, and it is error to deny such motion to amend. But if the amendment is not necessary to the admission of material testimony such motion may be denied.—*Hale* v. *Wigton.*—Filed Sept. 8, 1886.—Neb.

PLEADING.—EXECUTORY CONTRACT BY WIFE.—MORTGAGE.—An answer must respond to the entire complaint, or as much of it as it purports to answer. A married woman has power to make an executory contract, and a complaint on a note and mortgage executed by her need not allege that it was for the benefit of her separate estate.—*McLeod* v. *Etua Ins. Co.*—Filed Sept. 17, 1886.—Ind.

PRACTICE.—APPEAL FROM JUDGMENT OF JUSTICE.—WAIVER OF DEFECTS.—An appeal from the judgment of a justice of the peace is taken by "filing a notice of appeal with the justice, and serving a copy on the adverse party." Service on the attorney of record of the adverse party is sufficient. Where there has been irregularity in taking the appeal or in service of notice, the appearance of the attorney of record in the appellate court will cure any such defects.—*Mathews* v. *Superior Court.*—Filed Aug. 30, 1886.—Cal.

PRACTICE.—INTRODUCTION OF EVIDENCE SUBJECT TO OBJECTION.—When upon trial of a case certain evidence is objected to, it is the duty of the court to rule on the question, admitting or rejecting the same, if requested to do so. If not requested so to rule, testimony objected to should be excluded unless the objection be withdrawn and both parties agree to its admission. Where it is alleged that other evidence to be offered will render the offered evidence admissable, it may be received subject to the qualifying testimony to be offered.—*Daugherty* v. *Welch.*—Filed Jan. 4, 1886.—Conn.

PRINCIPAL AND AGENT.—EVIDENCE OF WARRANTY BY AGENT.—ADMISSION BY PRINCIPAL.—Where an agent sells machinery and at the time of the sale hands to the buyer a circular, in which the durability of the machine is positively affirmed, a warranty of its durability by the agent may be inferred, and from this fact, together with the silence of the principal subsequently in the presence of the allegation by the purchaser that the agent warranted the machine, it is competent to find a warranty—*Smith* v. *Hobbs.*—Filed July 30, 1886.—N. H.

PRINCIPAL AND SURITY.—IRREGULARITY OF THE EXECUTION OF THE BOND.—OFFICIAL BOND.—Where an official bond is required, and the form is prescribed by statute, if the statutory form is not followed, the bond is still binding, although the principal in the bond does not sign it, still the surities on the bond may be held. The name of the principal in the body of the bond cannot be construed as notice that he should sign it before delivery.—*School Trustees* v. *Scheick.*—Filed Oct. 5, 1886.—Ill.

PRINCIPAL AND AGENT.—LIEN AGAINST A NOMINAL ASSIGNEE.—Where one, for the accommodation of a third party, receives and ships goods for another in his own name, he does not acquire such property in them as to make them subject to seizure for his debts, or for former advance made on other shipments.—*D. O. Mills* v. *Porter.*—Filled July 20, 1886.—Cal.

PROCESS.—SERVICE BY PUBLICATION.—REQUIREMENTS OF THE CODE.—The statement of the affidavit for the publication of a summons must be in accordance with the provisions of the code. The statement that the plaintiff has a good cause for action against the defendant, and that the defendant is a necessary and proper party is insufficient. In such case proof of personal service must be made. When the person served resides out of the state, proof of service must be made by affidavit of the person making the service. Service made by a notary public and certified to under his

notarial seal is insufficient.—*Yolo County* v. *Kingbr.*—Filed Aug. 25, 1886.—Cal.

PROBATE BOND.—ONE DISCHARGED AND A NEW ONE APPROVED.—DISCRETION OF PROBATE COURT.—A judge of probate may order a new bond, which will supersede an old one, in two cases: *First* on petition of any one interested, setting forth that the bond is insufficient; and *second*, on the petition of a surety to be discharged. In the first case notice must be given to the principal. In the second case notice must be given to all parties interested.—*Brooks, Judge*, v. *Whitmore.*—Filed Sept. 8, 1886.—Mass.

PRINCIPAL AND SURETY.—BOND OF AN EMPLOYE.—ASSIGNMENT OF DIFFERENT WORK FROM THAT SPECIFIED IN THE BOND. —Where one employed as clerk in works executes a bond with surety for the faithful performance of his duties, and subsequently he is assigned to a more responsible position in the works, the bond given remains good and his bondsman is liable for the failure in the discharge of his duties in the new position.—*Lane's Appeal.*—Filed April 12, 1886 —Pa.

PROMISSORY NOTE.—HELD FOR COLLECTION.—OWNER MAY RELEASE.—The transfer of a note for collection does not convey title to the collector so that he can claim the ownership as against the principal or owner, and the owner may release the note to the payor, which will be valid against the claims of him who holds it for collection.—*Flanagan* v. *Brown.*—Filed July 28, 1886. —Cal.

PROMISSORY NOTE.—PURCHASER FOR VALUE—DECREE OF CANCELLATION.—Where one has purchased mortgage notes, for value and without notice of any equitable set-off, the subsequent cancellation of the mortgage by decree will not effect the rights of the holder of the notes. In an action to foreclose a mortgage which may be maintained at any time within ten years from the time the right of action accrues, the notes may be set out in the complaint as evidence of the debt. The assignee of a mortgage, purchasing for value, before maturity, takes the security as he does the notes, free from all equities of which he had no notice —*Cheney* v. *Janssen.*—Filed Sept. 29, 1886.—Neb.

PROMISSORY NOTE.—CONTEMPORANEOUS PAROL AGREEMENT.—BONAFIDE HOLDER.— In an action on a promissory note by a bonafide holder, it is not competent to show by parol a collateral parol agreement between the maker and the payee by which on certain conditions the note was to become null and void, and be cancelled, but where the issue is as to who was the owner or holder of the note at the time the action was brought, the question is one for the jury.—*Davey* v *Kelley.*—Filed Sept. 21, 1886.—Wis.

PROMISSORY NOTE.—ACTION ON.—COMPLAINT.—In an action on a promissory note it is not necessary that the complaint allege that the plaintiff was the holder and owner of the note at the time the action was commenced. It is sufficient if it allege that he previously obtained possession of the note, and that it has not been paid. Having once obtained possession of the note, the law will presume that his possession continued.—*Pryce* v. *Jordan.*—Filed May 24, 1886.— Cal.

PROSECUTION FOR PERJURY.—PRISONER UNDER INDICTMENT IN THE UNITED STATES COURT.—HABEAS CORPUS.—The prisoner was indicted by the grand jury in the United States court, and released on bail. He was arrested, on process from the state court, tried and convicted, and sentenced to a term in states prison. On petition of his bondsmen in the case in United States court it was sought to have him released on *habeas corpus. Held*, that he was not entitled to discharge, the United States court having waived its right to a prior trial.—*Mackin* v. *People.*—Filed Sept. 30, 1886.—Ill.

POOR DEBTOR'S DISCHARGE.—COMMITMENT—ALIAS EXECUTION.—Where a debtor

has been arrested on execution and discharged upon giving bond at the end of the year appears and surrenders himself, and is again arrested on an *alias* execution, he may be admitted to take the poor debtor's oath and be discharged.—*Savings Bank* v. *Wooster.* —Filed July 30, 1886.—N. H.

POOR AND POOR LAWS.—REFUSAL TO GO TO ALMSHOUSE.—SUBSEQUENT APPLICATION. —Where one has been receiving aid from the county, is ordered to be taken to the almshouse, and refuses to go, this does not bar his right to be taken subsequently. A subsequent application to be sent to the poor house should be considered as a new application.—*Winchester* v. *Cheshire Co.*— Filed July 30, 1886.—N. H.

PROMISSORY NOTE.—OBTAINED BY FRAUD —AFFIDAVIT OF DEFENSE.—In the absence of proof to the contrary, the holder of negotiable paper is presumed to be a *bona fide* holder. If, in an action upon a note, such facts as will overcome the *prima facie* title of the holder are properly set up in an affidavit of defense, the defendant is entitled to a trial by jury. Where the affidavit alleges that the note was issued by a limited partnership without the consent of a majority, as the law requires, and in fraud of the company, this is sufficient to give the defendant a jury trial. —*Lerch Hardware Co.* v. *First Nat. Bank.* —Filed March 23, 1886.—Cal.

PURCHASER AT SHERIFF'S SALE.—LIEN FOR PART OF REDEMPTION MONEY UNPAID.— One who purchases real estate at sheriff's sale and afterwards receives part of the redemption money, has a lien for the balance unpaid, although he holds only by certificate of purchase. The ten year statute of limitation does not run against such balance of unpaid redemption money.—*Ringle* v. *1st. Nat. Band.*—Filed Sept. 18, 1886.—Ind.

PURCHASE OF MORTGAGEE.—MERGER.— INTENTION.—When upon foreclossure of a mortgage the mortgagee purchases the premises, the mortgage will not be merged in the fee-simple title unless the mortgagee so intends. If after commencing an action to foreclose, the mortgagee purchases the premises of the mortgagor, and caucels his mortgage, he may defend against a subsequent incumbrancer to the extent of his mortgage.—*Smith* v. *Swan.*—Filed Oct. 5, 1886.—Iowa.

PUBLIC LANDS.—JURISDICTION IN DETERMINING CONTESTS AS TO THE SURVEY. — Where a contest arises as to the approval of the survey of public lands, or concerning a certificate of purchase upon reference to the superior court by the surveyor general, the court has jurisdiction and its judgment is final and conclusive upon all the parties.— *Lobree* v. *Mullan* —Filed July 14, 1886.— Cal.

PUBLIC LANDS.—DECISION OF INTTERIOR DEPARTMENT.— LANDS SELECTED INSTEAD OF OTHERS.—Where the state selected certain school lands in lieu of other lands supposed to be in the Mexican grant but were not, the decision of the interior department confirming the title to the state is final and conclusive.—*Green* v. *Hoyes*Filed July 28, 1886.—Cal.

RAILROAD PASSENGER.—RIGHTS OF UNDER HIS TICKET CONTRACT.—A common carrier's duty is limited to the carrying of such a kind of property as he undertakes and is accustomed to carry. A passenger holding a first-class ticket for passage between two points is not thereby entitled to ride in the baggage car, nor is he entitled to have anything transported free which is not properly denominated luggage or baggage. Even though he is willing to pay for its transportation, the carrier is not bound to take it. —*Pfister* v. *Cent. P. R. Co.*—Filed July 19, 1886.—Cal.

RAILROAD COMPANY.—EMPLOYMENT OF A PHYSICIAN BY A CONDUCTOR TO ATTEND AN INJURED BRAKEMAN.—Where the conductor of a train employs a physician to attend an injured brakeman, the company is not liable

for such service unless there is shown to be an emergency for such medical attendance. Where there is such an emergency the company is liable to the physician so employed, but he cannot employ a substitute or an assistant to attend the patient in his stead.—*T. H. & I. Ry. Co.* v. *Brown.*—Filed Sept. 26, 1886.—Ind.

RAILWAY COMPANY.—PASSENGER RIDING IN A FREIGHT TRAIN.—LIABILITY OF COMPANY.—A railway company cannot wholely relieve itself from liability for injury to a passenger riding on a freight train. Such passenger assumes the risk and inconvenience necessarily incident to such mode of travel, but it is the duty of the company in such case to exercise the highest degree of care consistent with the usual operation of the train. While the passenger obeys the regulations the same presumptions arise as if he were travelling on a passenger train.—*Wovlery* v. *L. N. A. & C. Ry. Co.*—Filed Sept. 17, 1886.—Ind.

RAILROAD COMPANIES.—PUBLIC RIGHTS IN AN EXISTING ROAD.—POWER OF THE STATE.—One of the public rights in an existing railroad is to have its corporate franchises and property maintained for the public use. All its corporate property is charged with this obligation. The state has therefore a right to enforce the continuous exercise of the franchise, even to the extent of exhausting such property, although in doing so it may be in coflict with some private right.—*Gates* v. *N. Y. Air Line Ry. Co.*—Filed Dec. 14, 1886.—Conn.

RAILROAD COMPANY.—CONSTRUCTING A DITCH AND SUBSEQUENTLY REFILLING IT.—Where a railway company in erecting an embankment constructs a ditch which drains adjoining land and makes it arable, and subsequently by constructing a culvert causes the land to be overflown, it cannot be enjoined in the latter. Its former act in draining the land does not constitute an estoppel in favor of the land owner.—*King* v. *C. B. & Q. Ry. Co.*—Filed Oct. 7, 1886.—Iowa.

RAILROAD COMPANIES—DEPRECIATION OF STOCK BY LEASING ROAD.—NO GROUND OF FRAUD.—In an action to have the lease of a railroad set aside on the ground that the making of the lease caused the depreciation of the common stock of the road it is *Held* that this is no sufficient grounds for setting aside the lease. If by the terms of such a lease the greater benefits inure to the benefit of the holders of preferred stock this is not such a ground of fraud as will justify the cancelling of the lease at the instance of a stockholder.—*Middletown* v. *P. & N. Y. Air Line Ry. Co.*—Filed Jan., 1886.—Conn.

RAILWAY COMPANY.—LEASE WITH THE RIGHT TO PURCHASE.—Where the owner of a railroad leased the road with its franchises for a certain term, with the right of the lessee to buy upon the payment of a certain sum the lessor cannot maintain an action for the rents and profits after the lessee has elected to buy the road.—*Stewart* v. *L. I. Ry. Co.*—Filed June 15, 1886—N. Y.

RAILROAD COMPANIES.—LIABILITY FOR FAILURE TO FENCE THE TRACK.—DAMAGES TO PASTURE LANDS.—The statute provides that any railroad company which fails or neglects to fence its track, "shall hereafter be liable for all damages sustained by any person in consequence of such failure or neglect." This language is held to cover, not only damages for injury to stock, but also damages to an abutting farm by rendering it less valuable for the purpose of raising or pasturing animals than it would be if properly fenced.—*Emmons v. Minn. & St. L. Ry. Co.*—Filed Sept. 11, 1886.—Minn.

RENTS AND PROFITS OF MORTGAGED PROPERTY.—RIGHTS OF PRIOR AND SUBSEQUENT INCUMBRANCERS.—Where a mortgage does not expressly pledge the rents and profits of the premises mortgaged to the payment of the debt, the mortgagee has no lien thereon. A prior mortgagee in possession must account to a subsequent mortgagee for rents and profits, but a subsequent incumb-

rancer is not bound to account to a prior mortgagee.—*Leeds* v. *Gifford.*—Filed Sept. 24, 1886.—N. J.

RAPE.— INDICTMENT FOR.— COMPLAINT OR INFORMATION.—In an information charging the crime of rape it is sufficient to charge the crime substantially in the form the statute prescribes, the exact words of the statute need not be used.—*People* v. *Pacheco.*—Filed Aug. 26, 1886.—Cal.

REFERENCE.—REFEREE'S REPORT INCONSISTENT WITH THE EVIDENCE.—Where the undisputed testimony before a referee shows that there was an account stated between the parties, and yet his report imports that they are not bound by such settlement, it is error and should not be confirmed.—*Killops* v. *Stevens.*—Filed Oct. 12, 1886.—Wis.

REPAIRING A BRIDGE.—POWER CONFERED ON THE SUPERVISORS AT A TOWN MEETING.—Where a town meeting, by a resolution, authorizes the supervisors to remove or repair the abutments of a certain bridge, does not authorize them to purchase the abutments. The town having built a bridge on the abutments thus illegally purchased, does not thereby ratify and make valid the contract of purchase.— *Hubbard* v. *Williamstown.*—Filed Oct. 12, 1886.—Wis.

REFEREES.—POWER TO TAKE TESTIMONY OUTSIDE THE STATE.—In a controversy between the executors and claimants against an estate, where the matter in dispute is referred to referees, the referees have power to issue a commission to take testimony outside of the state. The statute provides that "the same proceedings shall be had in all respects, the referees shall have the same powers, as if the reference had been made in an action in which such court might by law direct a reference."—*Paddock & Kirkham Ex'r.*—Filed June 25, 1886.

REMONSTRANCE TO ESTABLISHMENT OF A DITCH.—A FORMER DITCH CONSTRUCTED WITH SAME TERMINI.—In an action to establish a ditch it is competent to admit testimony of an assessment heretofore made for contructing a ditch with the same termini. Where in such case an appeal is taken from the commissioners to the circuit court the case is triable *de novo.* In appeals to the circuit court in all such cases the court or jury trying the case succeeds to all the duties of the viewers and reviewers and a finding upon all the issues is contemplated.—*Hardy* v. *McKinney.*—Filed Sept. 17, 1886. Ind.

REVERSING A JUDGMENT.—THE JUDGMENT OF THE DISTRICT COURT REVERSING THE JUDGMENT OF THE COMMON PLEAS.—Where an appeal has been taken from the common pleas to the district court reversing the judgment of the common pleas, the supreme court will not entertain an appeal from the judgment of the district court.—*Halderman* v. *Larrick.*—Filed Sept. 28, 1886. —Ohio.

RIPARIAN RIGHTS.——OBSTRUCTION OF NAVIGATION NOT PERMITTED BY A PRIVATE INTEREST.—The construction of boom for the private use and benefit of a riparian owner on the shore of a navigable lake which interferes with free navigation, is a private and public nuisance and will not be permitted. A boom, or dock, constructed for paivate use which does not obstruct, but facilitates general navigation, may be maintained.—*Union Mill Co.* v. *Shores.*—Filed Sept. 21, 1886.—Wis.

SALE ON EXECUTION.—CANNOT BE SET ASIDE EXCEPT IN EQUITY.—Where a sale of real estate has been made by the sheriff and the deed executed, the court has no power to set the deed aside upon motion. If set aside at all it must be by a court of equity.—The case of *Merriweather & Jenkins*, 109 Ill., 647 is followed in this case.—*Hollingsworth* v. *Koon.*—Filed Oct. 5, 1886.—Ill.

SAFE MACHINERY.—DUTY OF AN EMPLOYER.—RISK ASSUMED BY AN EMPLOYE. —An employer is bound to furnish suitable

and safe machinery for use of employe, and he cannot avoid liability by delegating the duty to another. But where machinery is not safe and the employe knowing this fact continues to use the same he is guilty of contributory negligence such as to bar his recovery for injury received.—*Sanborn* v. *M. F. & T. Co.* Filed July 28, 1886.—Cal.

SALE OBTAINED FRAUDULENTLY.—TITLE DOES NOT PASS.—REMEDY.—Where the sale of personal property is induced by fraud, no title passes unless the seller subsequently ratifies the sale. The seller's remedy when such sale has been made is by trover in the *detinet*, or trespass in the *cepit*, as he may elect.—*Amer* v. *Hightower.*—Filed Aug. 25, 1886.—Cal.

SALE.—CONDITIONAL.—FILING OF CONTRACTS.—Where a conditional sale of property is made, the sellor retaining title to the property, the statute requires such contracts to be filed for the purpose of notice, but where such contract is not filed and yet the creditor has notice otherwise of its existence such contract is valid as against an attaching creditor.—*Dyer* v. *Thorstad.*—Filed Oct. 1, 1886.—Minn.

SALE BY ASSIGNEE.—BANKRUPT'S REVERSIONARY INTEREST.—JURISDICTION OF STATE COURTS.—In proceedings in bankruptcy in respect to real estate, the interest of the bankrupt in real estate is in the nature of a reversionary interest. The purchaser at the sale in bankruptcy may be declared a trustee for the bankrupt, and the state courts have jurisdiction to determine the question of such relation.—*King* v. *Remington.*—Filed Oct. 9, 1886.—Minn.

SCHOOL-LAND-CONTRACTS.—FORFEITURE—DEFAULT OF PAYMENT AND NOTICE.—The failure to pay the purchase money or interest on school lands as per contract on the day it is due, does not necessarily work a forfeiture of the land if the purchaser shows good faith in the transaction. The notice of such delinquency published in a newspaper in the county where such land is situated is sufficient notice to a non-resident, and failure to comply with the notice will bar the rights of the purchaser.—*Richardson* v. *Pratt*—Filed Oct. 6, 1886.—Neb.

SCHOOL TAX.—DISTRICT MEETING ILLEGAL CONFIRMED BY A SUBSEQUENT MEETING.—LEVY OF TAX.—In assessing a school tax in a district the meeting for the purpose must be publicly called, and the meeting must be accessible to all interested. Where a meeting has been illegally called and an assessment made and a subsequent meeting called to rescind the action of the former, and at the latter meeting a resolution is passed not to rescind, this does not confirm or cure the illegality of the former action.—*Wright* v. *North School Dist.*—Filed March 12, 1886.—Conn.

SLANDER.—WHEN WORDS SPOKEN WILL CONSTITUTE CAUSE OF ACTION.—In considering whether certain words are actionable as a libel or not, the circumstances and the meaning which would naturally be taken of the words by those who heard them must be considered. The court will consider the expressions used and the whole scope of the writer or speaker.—*Bettner* v. *Holt.*—Filed July 28, 1886.—Cal.

SLANDER.—COMPLAINT.—PLAINTIFF'S SOCIAL POSITION WITH REFERENCE TO DAMAGES. In an action of slander or libel, it is not necessary for plaintiff to show that the publication complained of was not privileged, nor is it necessary to allege the same in the complaint. As bearing upon the measure of damages the plaintiff may show his social position. Whether a publication be privileged or not is a question for the court alone. *Dixon* v. *Allen.*—Filed May 18, 1886.—Col.

SETTLEMENT BY COMPROMISE.—JOINT CONTRACT TO PURCHASE LAND.—Where two parties jointly enter into a contract to purchase certain land of a third party, and it is agreed between the two purchasers as to the

division of the land after purchase, and one of the purchasers fails to perform, a portion of the land is deeded to the other party, and subsequently for an agreed consideration less than the original price, the whole is deeded to the one party. *Held*, a valid compromise of the joint contract.—*Zimmer* v. *Becker*.—Filed Sept. 21, 1886.—Wis.

SHERIFF'S SALE.—SETTING ASIDE.—INADEQUACY OF PRICE.—A sheriff's sale will not be set aside for mere inadequacy of price if no fraud entered into the matter. Fravd on the part of the purchaser is always a good ground for setting aside the sale. The rule of this court is as follows: "No motion to open a sale of real estate, made by the sheriff or coroner, will be entertained, unless made at the first opportunity, and an offer made by some responsible bidder to bid 25 per cent. more."—*Weaver* v. *Lyon*.—Filed May 10, 1886.—Pa.

SHERIFF.—PERSONAL LIABILITY TO A WATCHMAN EMPLOYED.—When a sheriff has seized goods on execution and employs a watchman to take care of and protect the goods while in his opssession, he is personally liable to the watchman for reasonable compensation for his services.—*Rowley* v. *Painter*.—Filed Oct. 7, 1886.—Iowa.

STATUTE OF LIMITATIONS.—FILING COMPLAINT BEFORE MAGISTRATE.—Where a complaint charging a felony is filed within the limitations of the statute, but no warrant issues on the complaint until the statute has run, the defendant may plead the statute in bar of the action. The mere filing of a complaint does not take the case out of the operation of the statute. The filing of the complaint is the initiatory step, and the issuing of a warrant does not necessarily follow.—*In Re. Griffith*.—Filed June 3, 1886.—Kans.

STATUTE OF LIMITATIONS.—ADVERSE POSSESSION.—DISPUTING RIGHT TO USE OF WATER.—Where a person uses water from a spring with the knowledge of and without the objection of the owner for five years uninterruptedly, he acquires the right to use it by adverse possession or user. Even if the owner disputed the right and failed to bring an action within five years the statute would bar the action.—*Cox* v. *Clough*.—Filed July 30, 1886.—Cal.

STATUTE OF LIMITATIONS.—ADVERSE POSSESSION.—CO-TENANCY.—Where one co-tenant is in possession of land his possession is not notice of adverse possession to his co-tenant who has the right at any time to enter. But where one is in possession under a deed which conveys to him all the property, his possession or those holding under him for the statutory period gives to him a perfect title by adverse possession.—*Bath* v. *Valdez*.—Filed July 30, 1886.—Cal.

STATUTE OF FRAUDS.—AGREEMENT TO SELL HORSES.—The statute provides that the sale of personal property to the value of $200 or more is invalid unless reduced to writing or unless there a partial delivery and acceptance of goods purchased or unless a part of the purchase money is paid. Where a lot of horses was sold for a sum greater than $200, and no written agreement, and no payment made by the purchaser, and none of the horses were delivered the contract is within the statute and void.—*Terney* v. *Doten*.—Filed Aug. 12, 1886.—Cal.

STATUTE OF LIMITATIONS.—WHAT WILL CONSTITUTE A NEW PROMISE AND BAR THE STATUTE.—Where a debtor acknowledges his indebtedness and proposes to submit to arbitration before the statute has run, such acknowledgment and proposal will not bar the running of the statute nor support an action brought after the running of the statute.—*Curtis* v. *Sacramento*.—Filed Aug. 17, 1886.—Cal.

STATUTE—CONSTRUCTION OF—INTENTION OF THE LEGISLATURE.—In construing a statute the intention of the legislature in the enactment must prevail. The whole statute should be considered and the instrument as a whole will prevail over a part, and the

history of the enactment may be traced as throwing light upon the intention of the legislature when the act was passed.—*Stout* v. *Grant County*.—Filed Sept. 16, 1886.—Ind.

STATUTE OF LIMITATIONS.—APPLIED TO A CUSTODIAN OF PUBLIC MONEYS.—Where a county officer is delinquent in the payment into the treasury, of public moneys received by him, the statute of limitations does not commence to run until demand is made npon him for the money. Where a county officer is authorized to appoint a deputy, such deputy is liable for the funds received, the same as if elected to the office by the people.—*S. L. Dispo Co.* v. *King*.—Filed, May 18, 1886.—Cal.

SUPPLEMENTARY PROCEEDINGS.—NOTICE.—SETTING ASIDE FOR IRREGULARITY.—In supplementary proceedings, under an order for discovery in aid of execution the defendant is entitled to personal notice. Notice left at his house, with his wife, in his absence, is not sufficient, and where personal notice has not been served the proceedings will be set aside.—*Shannon* v. *McMurtrie*.—Filed Sept. 9, 1886.—N. J.

SUPPLEMENTARY PROCEEDINGS.—POWER OF COMMISSIONERS.—In supplementary proceedings the commissioner ordered the husband of defendant to appear and submit to an examination. *Held* that the commissioner in such proceedings has no power to require any one but the defendant to appear for examination nor to restrain another person from disposing of property in his hands pending the proceedings. The party examined is entitled to an allowance for witness fees and expenses not exceeding $25 and costs.—*Blandon* v. *Gilchrist*.—Filed Sept. 21, 1887.—Wis.

SURVEYS AND SURVEYORS.—MAPS AND BOUNDARIES.—Private surveys and plats will not be admitted in evidence against the survey of the United States. A description of land in a deed by reference to lines drawn on a map is as definite and conclusive as if the plat of the land were drawn in the face of the deed.—*Chapman* v. *Polack*.—Filed Aug. 27, 1886.—Cal.

TAXES ON PERSONAL PROPERTY.—WHEN THEY BECOME A LIEN.—Tax upon personal property does not become a lien thereon until it is levied, nor do such taxes become a lien on real estate owned by the party in default until such levy is made.—*Castle* v. *Anderson*.—Filed Oct. 6, 1886.—Iowa.

TAXATION.—EXTENSION OF TAX ON ACRE PROPERTY AFTER IT HAS BEEN SUBDIVIDED INTO CITY LOTS.—Where land has been assessed for taxes and subsequently subdivided into city lots, the tax thus assessed becoming delinquent, the clerk has no authority to extend the tax thus assessed proportionately to each lot in the sub-division, nor can the tax on the whole of the land be extended as againt one or more of the lots.—*Gage* v. *Seipp, Treasurer*.—Filed Oct. 5, 1886.—Ill.

TAXATION.—LICENSE TAX.—RESOLUTION IMPOSING A TAX UNDER AN ACT WHICH HAS BEEN REPEALED.—In an action to recover a license for the sale of intoxicating liquor, it is not necessary that the collector appear personally to prosecute the action—his attorney may do so. Where such tax is imposed under an act of the legislature which has been repealed, the tax is illegal and cannot be recovered.—*San Obispo Co.* v. *Hendricks*.—Filed June 30, 1886.—Cal.

TRIAL.—MISSTATEMENTS OF EVIDENCE BY ATTORNEY IN ARGUMENT.—Where an attorney, in his argument to the jury, misstates the testimony, such misstatements cannot be considered on appeal, unless objection be made at the time and the ruling of the court had on it. If such objection and ruling be made part of the record, then the question may be reviewed, but not otherwise.—*Bullis* v. *Drake*.—Filed Sept. 29, 1886.—Neb.

TAXATION.—ASSESSMENT OF OMITTED PROPERTY.—AUTHORITY OF COUNTY COMMIS-

SIONERS.—A county auditor is an officer belonging to the administrative branch of the executive department, and it is nowhere provided that such officer may exercise the functions of the judicial department, and a county auditor cannot assess omitted property, and the county commissioners cannot delegate to the auditor such powers.—*Vandercook* v. *Williamz.*—Filed June 25, 1886.—Ind.

TRIAL.—FAILURE OF DEFENDANT TO RAISE AN ISSUE ON AN EQUITABLE POINT.—INSTRUCTION.—A defendant who fails in his answer to raise an issue on an equitable point, cannot subsequently complain if the court makes no finding on the point. In an action to recover possession of a mine, to instruct the jury that the failure of those locating the mine to put a monument at the corner, when the boundries were otherwise sufficiently described, was fatal to plaintiff's recovery, was error.—*Anderson, et. al.* v. *Black, et. al.*—Filed July 27, 1886.—Cal.

TRESPASS.—PLEADING.—ERROR IN DESCRIPTION OF LAND.—In an action of trespass where the plaintiff misdescribed the land on which the alleged trespass was committed, and the defendant answered claiming title to the land, when the pleadings otherwise showed that the plaintiff had title, a new assignment or amendment of complaint was not necessary. If the complaint was not sufficiently explicit, the defendant should have demurred, then the court would have ordered the complaint amended if necessary to raise the issue.—*Baier* v. *Ziegelboner.*—Filed Sept. 21, 1886.—Wis.

TRESPASS.—FELLING OF TREES ACROSS A LINE FENCE.—MEASURE OF DAMAGES.—In an action of trespass for felling trees across a line fence and leaving the brush on the neighbor's land, the measure of damages is not the mere expense of removing the brush, nor is it the value of the land alone. The damages should be measured by such considerations as the value of the land before and after the cutting: the uses to which the land is adapted; and the extent to which the plaintiff was deprived of its nse. The damages may be more or they may be less than the expense of removing the brush.—*Hutchinson* v. *Parker.*—Filed July 30, 1886.—N. H.

TRIAL OF A CRIMINAL ACTION.—INSTRUCTIONS.—REASONABLE DOUBT.—In a criminal trial, if it is clear that a certain degree of the crime charged is not involved in the case, it is not error for the court to refuse to give instructions defining that portion or degree of the crime. Where the court instructed the jury that "if you beleive that the knife and pistol which are said to have been found near the deceased at the time of the arrival of the officers were the property of the deceased, you will give the defendant the benefit of every rational doubt growing out of such circumstances." *Held*, that such instructions were ambiguous and erroneous.—*People* v. *Lee Gam.*—Filed May 24, 1886.—Cal.

TROVER AND CONVERSION.—WHAT IS THE MEASURE OF DAMAGES.—In an action for the recovery of value of goods wrongfully taken, the court instructed the jury that "if you find for the plaintiff, the measure of damages will be the value of the goods at the time they were taken by the defendants, at the place they were so takeu, with seven per cent. interest on such amount from the time of conversion." *Held*, that this ruling was correct. *Simpson* v. *Alexander.*—Filed April 9, 1886.—Kans.

TROVER AND CONVERSION—DEFENDANT'S BREACH OF CONTRACT.—To constitute a conversion of property there must be some exercise of dominion over property inconsistent with the owner's rights. Where one hired a horse and carriage to make a certain drive, and on the way stopped to feed his horse, and while the horse was in the stable feeding the building was burued, and with it the horse and harness. *Held*, that he was not guilty of a conversion of the property.—*Evans* v. *Mason.*—Filed July 30, 1886.—N. H.

TRESPASSING HORSE.—DRIVING UPON WIRE FENCE—NEGLIGENCE.—Where a horse was trespassing upon an inclosure the owner drove him upon a wire fence whereby he was killed. In an action t recover the value of the horse the defendant alleged that the plaintiff was guilty of contributory negli. gence in allowing a fence to be out of repair, whereby the horse became a trespasser. *Held*, that there was no evidence to show contributory negligence, and defendant was liable.—*Bullard* v. *Mulligan*.—Filed Oct. 5, 1886.—Iowa.

TRUST.—REVOCATION OF.—WHAT IS NECESSARY TO THE CREATION OF A TRUST.—If the subject matter of the trust be clearly defined and the purpose of the trustor made clearly manifest, and the trust be accepted by the trustee with full knowledge, the trust is thereby created, and if the subject of the trust be personal property it is not necessary that the transfer be in writing. When the trust has been created the trustor cannot revoke the same without the consent of the *cestui que trust*, unless in the creation of the trust the power to revoke was reserved.—*Hellman* v. *McWilliams*.—Filed Aug. 26, 1886.—Cal.

TRUSTS.—VIOLATION OF TRUST BY TRUSTEE.—Where children conveyed land to their father with the understanding that he should convey it to another and use the proceeds so far as necessary for his support, at his death the proceeds remaining should revert to the children. The father sustains the relation of trustee to his children, and where he gives a portion of the funds to a woman to induce her to marry him, it is a violation of the trust.—*Edinger* v. *Heiser*.—Filed Oct. 7, 1886.—Mich.

USURY.—A BROKER LOANING MONEY AND CHARGING THE BORROWER A COMMISSION.—Where a broker procures a loan of money for the borrower and charges him a commission in addition to the legal rate of interest on the loan, such charge will not be construed to be usury, especlally when the commission charged is not exhorbitant for the services rendred.—*Mackey* v. *Winkler*.—Filed Sept. 30, 1886.—Minn.

USURIOUS ADVANCE OF MONEY—REMEDY OF THE DEBTOR.—USURIOUS PAYMENTS DEDUCTED.—Where a debtor, unable to pay certain judgments against him, procured another to buy the judgments and take an assignment of them, and paid a bonus of $225 to have the same accomplished. *Held*, that the amount so paid was usurious and might be deducted from the amount of the judgments so held.—*Warron's Appeal*.—Filed Feb. 15, 1886.—Pa.

VENDOR AND VENDEE.—TIMBER LANDS—BREACH OF CONTRACT AND EVICTION OF VENDEE.—Where one contracts for the purchase of timber lands, agreeing to cut and deliver timber in payment for the land, and having performed the contract in part, is evicted for a breach of the contract, he is entitled both before and after eviction to the possession of the timber which he has cut on the land.—*Seeley* v. *Garey*.—Filed Oct. 5, 1886.—Pa.

VENDOR AND VENDEE.—RECOVERY OF PURCHASE MONEY UPON FAILURE TO CONVEY.—Where a party has agreed to convey certain lands, and after receiving the whole, or part of purchase money, he is unable or fails to convey title, the vendee may recover the purchase money paid. The law implies a promise on his part to do so.—*Sanders* v. *Lansing*.—Filed Aug. 25, 1886.—Cal.

VENDOR AND VENDEE.—EQUITABLE POSSESSION BY ONE WHO HAS PAID PART OF PURCHASE MONEY.—Where a brother and sister buy a farm and each pay part of the purchase money, and without the sister's knowledge the land is conveyed to the brother alone, the fact that the sister lives with the brother and keeps house for him is not notice to any one loaning money to the brother on a trust deed of her equitable rights in the property. A court of equity will declare a resulting trust in favor of the sister, al-

though the agreement between the brother and sister was not in writing.—*Harris* v. *McIntyre.*—Filed Oct. 5, 1886.—Ill.

WAYS.—ASSESSMENT OF LAND OWNERS.—Changing a free public road to a turnpike confers no special benefit on the land owner, and the converse is also true in changing a turnpike to a free public road. It follows that the statutory provisions authorizing the assessment of the price of the turnpike upon the land owners is unconstitutional and void. —*State* v. *Essex Public Road Co.*—Filed July 1, 1886.—N. J.

WAYS.—DEDICATION OF TO THE PUBLIC. —INTENTION OF OWNER.—The vital element in the dedication of land to the public is the intention of the owner. Where a dedication is claimed it must be clearly shown that such was the intention of the owner. A dedication will not be presumed. Dedication is a conclusion *of fact* to be drawn from all the circumstances of each case.—*Quinn* v. *Anderson.*—Filed Aug. 26 1886.—Cal.

WATER AND WATER-COURSES.—CONTRACT TO SUPPLY WATER-POWER.—SALE OF MILL.—Where the owner of a mill contracted for a supply of water-power for a period of ten years at a fixed price, reserving the right to sell the mill, having sold the mill during the time, he cannot be held under the contract for the water supplied after he sold the mill. —*T. M. & S. N. Water Co.* v. *Chevanne.*—Filed Sept. 9, 1886.—Cal.

WATERS AND WATER-COURSES.— TIDE LANDS ON THE COLUMBIA RIVER.—Up until 1879 the owner of lands abutting on the Columbia river had a prefered right to purchase the tide lands in front of their property. Where one subsequently purchased tide lands, procuring them by false representations, in an action to have him declared a trustee for the owner of the abutting lands, the court refused to declare the sale invalid, because the limitation had expired, but set the sale aside on the ground of fraud.—*Olney* v. *Moore.*—Filed March 9, 1886.—Oregon.

WATERS AND WATER-COURSES.—ACTION FOR DAMAGES CAUSED BY FLOWAGE.—Where a mill-owner had acquired the right to erect a dam and of flowage on plaintiff's land from October to April of each year, during the summer months, while his flood gates were open, an accumulation of drift wood caused a flowage and consequent damage to plaintiff. *Held*, that an action for the damage thus caused could not be maintained against the mill-owner.—*Clapp* v. *Manter.*—Filed Sept. 20, 1886.—Maine.

WATERS AND WATER-COURSES.—EASEMENTS BY PRESCRIPTION.—CESSATION OF ITS USE.—A mill owner having acquired an easement by prescription of flowage, he does not forfeit his right thereto by non-usage, unless such non-usage is continued uninterruptedly for a period of 20 years, or unless such non-user carries with it the unmistakable intention of abandonment. The extent of the flowage is measured by the limitation of the water when the dam is full.—*McConnell* v. *A. B. Powder Co.*—Filed Sept. 17, 1886.—N. J.

WATER AND WATER-COURSES.—LAND ABUTTING ON SEA SHORE.—TITLE BETWEEN HIGH AND LOW WATER MARK.—In the absence of proof to the contrary the courts must presume that the title to land abutting on the sea shore extends only to high water mark. The soil intervening between high and low water mark belongs to the state.—*L. B. L. & W. Co.* v. *Richardson.*—Filed July 26, 1886.—Cal.

WILL.—DEVISE IN TRUST AND THE BENEFICIARY TO TAKE INCOME ONLY.—When a testator bequeathed a certain amount to one of his sons in trust for another son, directing that the interest be paid to the beneficiary annually, and at his death the bequest to be divided among his children, if he had any, the beneficiary dying without issue, *Held*, that the bequest reverted back to the estate of the father and the administrator of the

father's estate was entitled to it.—*McDevitt's Appeal.*—Filed May 31, 1886.—Pa.

WILL.—ELECTION BY WIDOW.—DEED DELIVERED BUT NOT RECORDED.—Where a widow has the right of election between two properties, and without any formal election assumes the ownership of one, it is equivalent to a formal election by her, if at the time she has knowledge of her rights. Where a trustee conveys property which had been conveyed to him in trust, and the deed delivered in escrow subsequently cancelled, such cancellation is a good defense.—*Burroughs* v. *DeCouts.*—Filed July 31, 1886.—Cal.

WILLS.—LAPSED LEGACIES.—DISTRIBUTION BY DESCENT.—Where some of the legatees under a will die before the testator, the legacies as to them will lapse, and should be distributed by the laws of descent without regard to other legacies provided for in the will.—*Ward Exrs.* v. *Dodd.*—Filed Sept. 10, 1886.—N. J.

WILLS.—BENEFICIARIES NOT IDENTIFIED. TRUSTS PARTLY VALID AND PARTLY VOID.—Where a testator directed that his executor disburse to worthy persons in his discretion, a sum not exceeding $500, *Held*, that the bequest was inoperative, as the *cestuis que trust* was not ascertained. When a portion of a bequest is valid and a part void, that which is valid shall be executed, the balance will fall into the residuum of the estate and be distributed as an intestate estate.—*Bristol, Exr.* v. *Bristol.*—Filed Dec. 14, 1885.—Conn.

WRIT AND PROCESS.—PRESUMPTION AS TO THE ACTION OF A PUBLIC OFFICER.—SUMMONS TO ANOTHER COUNTY.—The presumption is always indulged by the court, in the absence of anything shown to the contrary, that public officers discharge their official duties according to law. Where a summons is issued to the sheriff of another county, against a corporation, it will be presumed that there was no officer or agent within the county on whom process could be served. *R. R & St. L. Ry. Co.* v. *Jewell.*—Filed Sept. 5, 1886.—N. Y.

Loan & Trust Co. v. *M. E. & M. Works.*
Filed Oct. 5, 1886.—Minn.

(Machinery does not become a fixture attached to a realty, unless it be in the ordinary sense a part of the building—that is, constructed especially for the building or fitted into it.)

In Re. Assignment of Gazett.
Filed Oct. 1, 1886.—Minn.

In an action by creditors to be allowed to share in an insolvent estate without filing a release, it is sufficient to aver in the complaint that the creditor has fraudulently concealed his property, and disposed thereof in fraud of his creditors.)

Thomas v. *Joslyn.*
Filed Oct. 6, 1886.—Minn.

(Where a judgment has been obtained for the specific performance of a contract, such judgment is a bar to a subsequent action to reform the contract.)

Blakely Townsnip v. *Devine.*
Filed Oct. 13, 1886.—Minn.

(The supervisors of a town have no authority in improving highways, to so construct drains or ditches, as to cause adjacent lands to be overflowed to a greater extent than would otherwise naturally occur.)

Clapp v. *M. & St. L. Ry. Co.*
Filed Oct. 6, 1886.—Minn.

(An engineer is not presumed to have assumed the risk incident to a weak or defective rail in the track, and being injured thereby he has a right of action against the company.)

McKern v. *City of Albia.*
Filed Oct. 8, 1886.—Iowa.

(An instruction which in effect orders a verdict in favor of the plaintiff in an action for personal injury, upon finding that the allegations of the complaint are established, without considering the question of contributory negligence, is error.)

Coleman v. *Goodnow.*
Filed Oct. 6, 1886.—Minn.

(A material man must file his account in proper form within the time prescribed by statute in order to obtain a lien for materials furnished.)

State v. *Jordan,*
Filed Oct. 12, 1886.—Iowa.

(In a prosecution for larceny the defend ant may explain his possession of the stolen property by showing what was said at the time he got possession.)

Rogers v. *Highland.*
Filed Oct. 12, 1886.—Iowa.

(Where a mare with foal is the subject of a chattel mortgage, the lien of the mortgage attaches to the colt until it is weaned.)

Ex. Parte Baldwin.
Filed Oct. 12, 1886.—Iowa.

(In a criminal action where the court in either one of two counties may have jurisdiction, the court first acquiring jurisdiction shall retain it and administer justice.)

Poertner v. *Poertner.*
Filed Oct. 25, 1886.—Wis.

(In an action of divorce on the ground of adultry, the issue must be tried by a jury, unless a jury is waived by the parties, and the issue should be determined by a clear preponderance of the testimony.)

Alexander v. *Irwin.*
Filed Oct. 6, 1886.—Neb.

(By an act of 1885, abstracts are required to be prepared and filed in the Supreme Court instead of the transcript and bill of exceptions, and all points to be considered by the court must be embraced in the abstract.)

Hershfield v. *Lowenthal.*
Filed June 4, 1886.—Kan.

(Where a promissory note is taken in payment of an open account, and it is subsequently found that during the existence of the open account and before the execution of the note the debtor had fraudulently disposed of part of his property. *Held,* that an attachment could not issue on the grounds of such fraud at the instance of the creditor who had accepted the note.)

Baugh v. *Barrett, admr.*
Filed Oct. 12, 1886.—Iowa.

(Where upon trial there is a misjoinder of actions and no objection is made, it is too late upon appeal to raise the objection.)

Shamp v. *Meyer.*
Filed Oct. 7, 1886.—Neb.

(In the case of *Miliani* v. *Tognini,* 8 Pac. Rep. 279, it was held that a party may maintain an action on a contract to which he was not a party when it contains a provision for his benefit. Like rule maintained in *Lawrence* v. *Fox* 20 N. Y. 268.)

Miller v. *Hartford Fire Ins. Co.*
Filed Oct. 9, 1886.—Iowa.

(In furnishing proofs of loss under a fire insurance policy, it is sufficient to state the aggregate amount of loss without itemizing the several kinds of property, and unless the company object at the time, it cannot raise the objection subsequently on trial of an action on the policy.)

Hagy v. *Avery.*
Filed Oct. 7, 1886 —Iowa.

(A guardian of a minor may, with permission and approval of the court, compromise a suit to which the minor is a party, without notice to the minor.)

State v. *Am. Glucose Co.*
Filed Sept. 24, 1886.—N. J.

(Under the tax law the term "Carrying on business in this state," means the establishing of a factory, bringing raw materials and converting them into goods or wares.)

Odell v. *Gotfrey.*
Filed May 26, 1886.—Oregon.

(In taking an appeal from a justice court, the undertaking must be filed within 30 days from date of the judgment.)

Nigro v. *Hatch.*
Filed June 12, 1886.—Arizona.

(Where the statute requires that an abstract of the record be certified by the judge, a memorandum verefied by the clerk as the statement agreed upon, will not be a compliance with the statute.)

Garrett v. *Burlington Plow Co.*
Filed Oct 6, 1886.—Iowa.

(An obligation issued by a corporation in excess of the limit of its charter is not thereby void, and although issued to a director of the company, if taken by him in good faith as collateral is valid.)

Long v. *Pomeroy.*
Filed Oct. 5, 1886.—Ill.

(Where the executors of a mortgagee undertake to foreclose a mortgage, and it clearly appears that the mortgage notes have been paid, the sale under the mortgage may be restrained by injunction.)

Stults v. *Stults.*
Filed Sept. 18, 1886.—Ind.

(Where the husband has settled property upon his wife, and she snbsequently sues for divorce, he cannot obtain a revocation of such settlement. If she makes no claim for alimony he cannot have the question of property rights considered in divorce proceedings.)

State v. *Longton.*
Filed June 4, 1886.—Kans.

(Where one is arrested on a warrant, for illegally selling intoxicating liquor, and he appears and enters into a recognizance for his future appearance, he waives any irregularity or defect in the warrant or in the information.)

State v. *Burns.*
Filed June 4, 1886.—Kans.

(In an action for breach of the peace, where particular acts at a particular time are relied upon for conviction, the defendant's conduct at other times may be shown in support of the charge that the act charged was willful.)

McKean v. *McKean.*
Filed Sept. 25, 1886.—N. J.

(A husband, who by false statements procures of his wife her engagement ring, and departs taking it with him, is conclusive evidence of his intention to desert her, and she is entitled to a divorce.)

Killoren v. *Murtaugh.*
Filed July 30, 1886.—N. H.

(Where a tenant is in possession of premises which are sold, and he continues in possession and promises to pay rent to the grantee, he cannot subsequently in an action for the rent deny his landlord's title.)

Board of Commissioners v. *Homer, Collecior.*
Filed Sept. 20, 1886.—N. J.

(Where a township has voted a tax, and subsequenty a portion of said township is erected into a separate borough, the citizens of the newly organized borough cannot compel the township collector to pay over to the borough its pro rata or any share of the taxes so levied and collected.)

Sherburne v. *Rippe.*
Filed Oct. 1, 1886.—Minn.

(A sheriff's return on an execution that the same was *unsatisfied*, has not the same effect as a return of *nulla bona*, and will not preserve the lien of the judgment beyond five years.)

Adamson v. *Peterson.*
Filed Oct. 1, 1886.—Minn.

(Lumber which is the subject of a chattle mortgage, described as being on a car at a certain point, may be shown to be at a different place from that described in the mortgage. A mortgagee may recover the full value of the property from a stranger who can show no right of possession.)

County of Amador v. *Kennedy.*
Filed Aug. 26, 1886.—Cal.

(It is held that the board of county supervisors, in imposing a license tax to sell intoxicating liquors, may discriminate between villages, towns and way-side inns.)

State v. *Hilton.*

Filed June 4, 1886.—Kans.

(A false instrument or writing made for a frandulent purpose, may be the subject to forgery.)

Knowlton v. *Mandeville.*

Filed Sept. 8, 1886.—Neb.

(Where the verdict is manifestly a proper one in the light of all the evidence, an erroneous instruction given by the court will not be sufficient grounds on which to remand the case.)

G. B. & M. Canal Co. v. *Hewitt, Jr.*

Filed Sept. 21, 1886.—Wis.

(A reservation in a deed is in effect a grant by the grantee back to the grantor, and if of doubtful construction must be construed in favor of the grantee.)

Young v. *Lynch.*

Filed Sept. 21, 1886.—Wis.

(Where a complaint is vague the defendant may demur or move to have the complaint made more specific, and such motion may be made at any time within the time allowed for answering.)

Manning v. *Meredith.*

Filed Oct. 7, 1886.—Iowa.

(In an action on a promissory note where the issue is on a plea of payment, the jury should consider with other matters the length of time since the alleged payment.)

Township v. Whipple.

Filed Oct. 7, 1886.—Mich.

(In an action against a township treasurer for funds unaccounted for while the plaintiff based its claim upon one system of accounting and the defendent set up a different system, and the jury found for the defendant, the appellate court refused to interfere with the judgment.)

People v. *Jnng Qung Sing.*

Filed Aug. 26, 1886.—Cal.

(The statute requires that when the defendant appears for judgment, he must be informed by the court of the nature of the charge against him, etc. Where the court informs the defendant about to be sentenced for the crime of murder that an information charging him with murder was filed against him on a certain day; of his arraignment and plea of guilty; of his trial; and of the verdict, and asks him if he has anything to say why sentence should not be pronounced upon him, the statute is complied with.)

Wiggins v. *Bridge.*

Filed Aug. 25, 1886.—Cal.

(The right of a material-man to a lien on the land and building, as against the owner, for materials furnished the contractor, depends for its existence upon the fact of an indebtedness from the owner to the contractor at the time of or subsequent to the notice.)

Lane, Admr. v. *Central Ia. Ry. Co.*

Filed Oct. 8, 1886—Iowa.

(The qxestion of Negligence in an action for damages for personal injury, is always a question for the jury, and the court is not warranted in taking the case from the jury unless the plaintiff entirely fails to establish his case.)

Bailey v. *Town of Paulina.*

Filed Oct, 9, 1886.—Iowa.

When one has been arrested for violation of a city ordinance which is void, and he goes to trial, is fined and pays his fine without protest, cannot recover the money paid in an action for that purpose.)

Wall, Admr. v. *C. & N. W. Ry. Co.*

Filed Oct. 12, 1886.—Iowa

(In an action against a foreign corporation where the petition shows that more than two years have elapsed since the cause of action accrued, a demurrer may be successfully interposed.

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AGENCY—POWER OF AGENT LIMITED BY TERMS OF APPOINTMENT—Where an agent was appointed to sell machines, and it was provided that the principal would not be bound to furnish machines if the demand should exceed the supply and capacity to produce the machines, and further, the agent was not to sell to any one except those known to be responsible, in an action by the principal against the agent, the latter filed a counter claim for damages for the non-shipment of five machines ordered. *Held*, that as in the complaint there was no allegation that the parties to whom machines were sold were responsible, nor that the machines were ordered, the counter-claim could not be allowed.—*Williams Harvesting Co.* v *Pope.*—Filed Oct. 13, 1886.—Ia.

AGENT FOR SALE OF LAND—NO POWER TO CONTRACT FOR IMPROVEMENTS—Where an agent for the sale of land placed one in possession under a verbal contract that he should become the purchaser of the land at a certain time, and the party makes improvements on the land by building a house and otherwise, no lien can attach to the land therefor. The contract with the agent is a personal one, and if he had any interest in the land to which a lien could attach it might do so.—*Wilkins* v. *Litchfield.*—Filed Oct 9, 1886.—Iowa.

APPEAL—LIABILITY ON APPEAL BOND WHEN APPEAL DISMISSED—Where an appeal is taken and the appeal bond conditioned that the appelant shall perform the judgment of the appellate court, and the appelant failing to prosecute the appeal it is dismissed, the dismissal is equivalent to an affirmance of the judgment below, and the signers of the bond are liable thereon.—*Coon* v. *Mc Cormick.*—Filed Oct. 14, 1886.—Ia.

APPEAL—FINDINGS FROM DEPOSITIONS—RENEWAL OF A LEASE—The supreme court reluctantly disturb the findings of a lower court from oral testimony, but where findings are based on depositions, the supreme court will review the whole record. A lease having expired and a renewal on the same terms being agreed upon if the lessor changes the date of the old lease and delivers it to the lessee it is valid.—*Baker* v. *Rockabrand.*—Filed Oct. 5, 1886.—Ill.

APPEAL—TIME ALLOWED—CONTRACT FOR DELIVERY OF MERCHANTABLE CORN—The time allowed for the filing of a petition in error is one year from overruling a motion for a new trial. Where one agreed to deliver good merchantable corn, and the corn tendered was refused in an action on the contract alleging the tender of merchantable corn, the burden of proof is on the plaintiff to show that the corn tendered was merchantable.—*Bates* v. *Lyman.*—Filed Oct. 7, 1886.—Kans.

APPEAL—ISSUE—TRIAL WITHOUT ISSUE—The rule of court is that if a cause is not struck off the list for want of an issue when the list is first called over, neither party shall afterwards object for want of a formal issue, and the cause shall proceed to trial on the general issue. In this case an appeal from a justice of the peace had been placed on the issue docket without an issue formed, and the judgment of the justice affirmed. *Held*, that it was too late after judgment to object.—*Goodwin* v. *Slusher.*—Filed Oct. 18, 1886.—Pa.

APPEAL—JUDGMENT AFFIRMED IN PART—FORECLOSURE OF MORTGAGE—When on appeal the judgment of the lower court is affirmed in part, and in part remanded, the decision is final and conclusive as to the points affirmed. Where a mortgagee is forced to an action to establish his right to redeem from a foreclosure sale, he is entitled to costs in case he is successful.—*Mowry, Assignee,* v. *First Nat. Bank.*—Filed Oct. 12, 1886.—Wis.

APPEAL—PRESUMPTIONS—JUSTICES DOCKET AS EVIDENCE—Upon appeal all reasonable presumptions will be indulged in favor of a general verdict, but not in favor of special findings. The docket of a justice of the peace is competent evidence without the original papers in the case, if verified by the affidavit of the justice.—*Redelsheimer* v. *Miller.*—Filed Sept. 24, 1886.—Ind.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS—FRAUDULENT MORTGAGE—ACTION BY ASSIGNEE.—Where a debtor in failing circumstances, makes a fraudulent mortgage and subsequently makes a general assignment for the benefit of his creditors, the assignee is the only one authorized to bring an action to set aside the mortgage. If the assignee refuses to do so the creditors may obtain leave of the court to bring such action.—*Sweetser* v. *Camp.*—Filed Oct. 7, 1886.—Ia.

ATTACHMENT—FRAUDULENT REPRESENTATIONS—Where an attachment issues for a debt fraudulently contracted and it is shown that the purchaser of the goods falsely represented the value of land on which he held a mortgage, which he assigned in payment of the goods, the attachment was sustained on the ground that the debt was fraudulently contracted.—*Littlejohn* v. *Jacobs.*—Filed Oct. 12, 1886.—Wis.

ATTACHMENT—BOND—DISSOLVING ATTACHMENT DISBHARGES THE BOND.—Where suit was commenced by attachment and the defendant gave bond, and subsequently the attachment was dissolved and the action proceeded to judgment as if commenced by summons, the dissolution of the attachment discharged the bond. An execution being issued and returned *nulla bona*, no action can be maintained on the bond.—*Fernan* v. *Butcher.*—Filed Oct. 4, 1886.—Pa.

ATTACHEENT—WHEN IT MAY ISSUE—CONTRACT MADE IN THE STATE OR PAYABLE IN THE STATE—An attachment cannot issue in an action on a contract unless the con-

tract was made in the state or by express terms was payable in the state. Where an attachment issued on a contract neither made in nor payable in the state, and a sub sequent attachment was issued upon a contract made in the state and levied upon the same goods as the former, the latter attachment superseded the former, as it was valid. —*Trabant* v. *Rummell.*—Filed Oct. 11, 1886.—Oregon.

ACTION ON BOOK ACCOUNT—PROMISSORY NOTES NOT INCLUDED—Where a party brought an action on a book account and at the same time holding promissory notes made by the defendant, did not include them in the action, obtained judgment on the account, and subsequently brought an action on the notes. *Held*, that the action was barred by the former suit on the account.—*Buck* v. *Wilson.*—Filed Oct. 4, 1886.—Pa.

ATTACHMENT—SERVICE OF—MANUAL SEIZURE NOT NECESSARY—Where a sheriff in serving an attachment on a bank read the attachment to the president and cashier, and listed the property seized, leaving with the said officers a copy of the attachment and inventory of property seized, and leaving them in possession of the same, *Held*, that the attachment was valid. It is the duty of the officer in serving the attachment to take manual possession of the property seized if it is practical to do so, but failing in this duty will not void the service.—*Dreisbach, Assignee*, v. *Mech. Nat. Bank.*—Filed Oct. 4, 1886.—Pa.

ATTORNEY AND COUNSELOR—AN AGREEMENT TO TAKE PART OF PROPERTY RECOVERED AS FEES—Where an attorney agrees with his client to take a portion of the property to be recovered in the action as his fees and pending the action the client gets a settlement of the case, the attorney cannot intervene to continue the case. He has no lien on the property for his fees. He must assert his rights under the contract against his client by an action commenced for the purpose.—*Lavender* v. *Atkins.*—Filed Oct. 6, 1886.—Neb.

ATTORNEY—DEPOSITING FUNDS COLLECTED FOR A CLIENT—LIABILITY WHEN THE BANK FAILS—Where an attorney has collected money for a client and deposited it in a bank and the bank fails, the attorney is liable to the client for the funds. This is true, although the fund was not mingled with his own funds, and although he was delayed in remitting to his client by reason of garnishee process being served upon him.—*Naltner* v. *Dolan.*—Filed Sept. 23. 1886.—Ind.

BAIL AND RECOGNIZANCE—APPEARANCE IN THE CRIMINAL COURT—CIRCUIT COURT HAVING JURISDICTION—Where a defendant enters into a recognizance to appear before the *Criminal Court* of the county at a certain time, and there being no criminal court established in the county, the circuit court having jurisdiction of criminal actions, the terms of the recognizance are sufficient notice as to the court before which he is bound to appear.—*Petty* v. *People.*—Filed Oct. 6, 1886.—Ill.

BAIL AND RECOGNIZANCE—DISCHARGE OF BOND BY VACATING THE ORDER OF ARREST—Where one arrested in a civil action gives bail for his appearance and subsequently the order of arrest is vacated by the district court and no stay of the order of vacation is granted, the vacation of the order of arrest discharges the bond. The bondsman has no longer any right to surrender the prisoner. —*Baker Mfg. Co.* v. *Fisher.*—Filed Oct. 7, 1886.—Kans.

BASTARDY—EVIDENCE AS TO THE RELATIONS OF DEFENDANT WITH OTHER MEN—In an action for bastardy it is competent for the defendant to introduce testimony tending to show improper relations between the plaintiff and other men. The admission of such testimony is largely in the discretion of the trial court.—*Odewald* v. *Woodsum.*—Filed Oct. 22, 1886.—Mass.

BIGAMY—COHABITATION AS EVIDENCE OF MARRIAGE—In a prosecution for bigamy it is sufficient to establish the fact of marriage to

another woman at the time of the second marriage, and this fact may be established by the admissions of defendant of cohabitation.—*State* v. *Hughes*.—Filed Oct. 7,1886.—Kans.

BIGAMY—ILLEGAL MARRIAGE—Cohabitation, after illegal marriage and cohabitation in another state, constitutes the crime of bigamy. In the trial of such action for bigamy the testimony of the complaining witness cannot be rebutted by showing her character to be unchaste.—*State* v. *Nadal*. Filed Oct. 11, 1886.—Ia.

BOND—OBLIGORS ANNEXING TO THEIR SIGNATURES THEIR PROPORTION ASSUMED.—Where ten parties unite in a bond of guaranty for the payment of money, and anyone or more of them annex to their signatures the fraction of 1-10 this will not have the effect of limiting his liability on the bond, as between the makers of the bond and the creditors.—*Fourth Nat. Bk.* v. *Olney et. al.*—Eiled Oct. 14, 1886.—Mich.

BOUNDARY OF HIGHWAY—ENJOINING THE ACTION OF SELECTMEN OF A TOWN—The fact that a fence along the side of a roadway has stood for a long period in its present position is not conclusive that it marks the boundary line between the roadway and the abutting land. Selectmen in entering upon private lands to grade the same for a highway as directed by a vote of the town are acting for the town, and the town may be enjoined from proceeding when cause exists.—*Wetherell* v. *Newington*.—Filed July, 1886.—Conn.

CARRIERS OF PASSENGERS—STREET CARS—REQUISITE CARE—Where there is room inside a street car and the conductor permits the platform to be crowded so that egress becomes difficult and injury to a passenger occurs thereby, the company is guilty of that degree of negligence which may entitle the injured party to damages. The question of negligence should go to the jury.—*Neslie* v. *Passenger Ry. Co.*—Filed Oct. 14, 1886.—Pa.

CHATTEL MORTGAGE—RIGHT OF THE MORTGAGEE TO RETAIN AND SELL THE GOODS—The mortgagor of a chattel mortgage may retain possession of goods and sell the same under an agreement to that effect, and apply the proceeds thus obtained to the payment of the mortgage. The misappropriation of the proceeds by the mortgagor does not render the mortgage void.—*Gibbs* v. *Parsons*.—Filed July 30, 1886.—N H.

CHARITABLE USES—BEQUEST FOR MASSES—WHEN PAYABLE FOR SAYING MASSES—A testator made the following bequest: "I also give and bequeath the sum of $1,000, which my executor shall pay to the pastor at Newry, Blair county, for masses for the repose of my soul, and for the repose of the souls of relatives, and the repose of the souls of the faithful of my parish." *Held* a good charitable bequest.—*Appeal of Seibert, Ex'r.*—Filed Oct. 4, 1886.—Pa.

COMMON CARRIER—LOSS OF GOODS IN TRANSIT BY ACT OF OWNER—The code provides that "no contract, receipt, rule, or regulation shall exempt any corporation engaged in transportation of persons or property by railway from liability of a common carrier," yet where property in transit is lost by the act of the owner the corporation is not liable, although the contract with the owner was in violation of the statute.—*Hart* v. *C. & N. W. Ry. Co.*—Filed Oct. 11, 1886.—Iowa.

CONTEMPT—DISCRETION OF THE SURROGATE—Where an executor is in default it is largely in the discretion of the surrogate whether he impose a fine and imprisonment, or both, for contempt, and the court is not bound to receive the statements of the defaulter, as true, unless corroborated by other testimony.—*In Re. Snyder, Ex'r.*—Filed Oct. 5, 1886.—N. Y.

CONTRACT—MADE BY ONE INTOXICATED—VOIDABLE—One who enters into a contract when he is intoxicated to that degree

which renders him destitute of reason, so that he does not know the consequences of his act, may void the contract, although the intoxication was his voluntary act.—*Bush* v. *Breing*.—Filed Oct. 4, 1886.—Pa.

CONTRACT—ACTION FOR BREACH—ONE OUSTED OF POSSESSION—Where one was in possession of premises under a contract, the other party commenced proceedings before a justice and obtained judgment and possession. The defendant appealed and the decision of the justice was reversed. *Held*, that defendant could not recover damages for a wrongful ouster. The judgment of the justice was evidence of probable cause.—*Graver* v. *Feher*.—Filed Oct. 4, 1886.—Pa.

CONSTRUCTION OF CATTLE GUARDS—DAMAGES TO PASTURE LANDS ADJOINING FOR WANT OF—Where a railway company by neglect to construct cattle guards at a crossing as required by statute, and an adjoining land owner is thereby deprived of the use of adjacent pasture land, the company is liable for the loss sustained. In determining the measure of damages the jury should consider the cost of herding the cattle, if such herding was necessary.—*Roridan* v. *Central Ia. Ry. Co.*—Filed Oct 13, 1886.—Ia.

CONSTITUTIONAL LAW.——CONNECTING RAILROAD LINES—INTER-STATE COMMERCE—Transportation carried on by railroads in this state in connection with other roads in other states, is not inter state commerce as interpreted by the constitution of the United States. A corporation doing business in this state is liable for a license fee for the privilege of having an office in this state.—*N. & W. Ry. Co.* v. *Commonwealth*.—Filed Oct. 4, 1886.—Pa.

CONTRACT—DISPUTED BOUNDARY—SUBMISSION TO ARBITRATION—Where a controversy existed as to the boundary line between two tracts of land, the owners finally entered into a written agreement, fixing the boundary line. The basis of this agreement was that defendant undertook to pay the plaintiff for a certain piece of land such price as should be placed upon it by arbitrators to be chosen for the purpose. *Held*, that the location of the boundary line as agreed was a sufficient consideration on which to base an action for the price of the said piece of land.—*Finley* v. *Funk*.—Filed Oct. 7, 1886.—Kans.

CORPORATION—TRANSFER OF SHARES OF STOCK—BY-LAWS—Where the by-laws of a corporation prohibit the transfer of shares of stock without the consent of all the stockholders, it is against public policy and void; whether the number of stockholders are few or many does not change this rule. A secretary of a corporation is merely a ministerial officer, and has no right to inquire into the motives of parties to a transfer of stock.—*In Re. Petition of Klaus*.—Filed Oct. 12, 1886.—Wis.

COST—LIABILITY OF NOMINAL PARTY—SETTING ASIDE JUDGMENT—Where a father insured his son's house, without the son's knowledge, and a loss occurred, the father ordered suit on the policy and was defeated. The defendant company then obtained judgment against the son for costs and sold his property to satisfy the same. *Held*, in an action to set aside the judgment, that the son was not liable as he never authorized the action.—*Markham* v. *Burlington Ins. Co.*—Filed Oct 13, 1886.—Ia.

COURTS—WANT OF JURISDICTION—WAIVER OF—Where the want of jurisdiction is manifest it may be taken advantage of at any stage of the proceedings, but if the question of jurisdiction is doubtful and the parties proceed without objection to a trial, the court will retain jurisdiction and determine the matter in dispute.—*Appeal of Adams, Admr.*—Filed Oct. 4, 1886.—Pa.

CRIMINAL LAW—JUDGMENT SUSPENDED PENDING APPEAL—VIOLATION OF CITY ORDINANCE—Where one was convicted of violation of a city ordinance and a fine imposed with an order of commitment until the fine

be paid, pending an appeal to the supreme court, the judgment of the lower court is suspended. Where the order of commitment was to the county jail whilst the ordinance provided for such commitment to the city jail, it is not error.—*Miltonville* v. *Lanone.*—Filed Oct. 7, 1886.—Kans.

CRIMINAL LAW—STATUTE REGULATING FISHING IN A RIVER—Where a statute prohibiting fishing with a net or seine, in a particular part of a river, at a particular time, and a complaint charging defendant with illegally fishing in the river generally, without specifiying any particular part of the river, such complaint is bad on demurrer.—*State* v. *Turnbull.*—Filed Oct. 14, 1886.—Maine.

CRIMINAL LAW—PROSECUTION FOR RAPE—DEFENDANT FORFEITING HIS BAIL—In an action for rape where the defendant ran away, he cannot rebut the inference of guilt arising from such act by showing that he was afraid of being lynched. Where the father of the prosecuting witness has offered to settle the case for a given sum, evidence of such offer cannot be introduced on the trial unless it be shown to be in the nature of blackmail.—*State* v. *McDivitt.*—Filed Oct. 14, 1886.—Iowa.

DEED—ESSENTIAL WORDS OF A GRANT—FURTHER COVENANT—In construing an instrument which contains words of conveyance, and also covenants, as of a bond where it contains the words, " I have this day bargained, and *do grant*, bargain, sell and confirm," and the instrument purports to convey land, these words are sufficient to pass title. Twenty years possession of land is a bar to an action of ejectment.—*Johnson* v. *Filson.*—Filed Oct. 6, 1886.—Ill.

DEED BY A PAUPER—VESTED REMAINDER IN FEE HELD BY A SPENDTHRIFT—One who has been declared a spendthrift and a guardian appointed for him, who never qualifies, such spendthrift may make a valid grant of a vested remainder,held by him in an estate, to a town upon which he is dependent for support, for the purpose of reimbursing the town for expenses incurred in his support.—*O'Donnell, Ex'r,* v. *Smith.*—Filed Oct. 22, 1886.—Minn.

DEED—SALE OF LAND WITH A RESERVATION OF TIMBER—A person having the right to cut and remove timber growing on the land of another may be compelled to remove it after reasonable time, or he will be presumed to have relinquished his claim to it. One having a lien on goods who sets up a claim hostile to the right of the owner, and wrongfully sells the property, he cannot set up the lien as a bar to the action against him for his illegal act.—*Andrews* v. *Wade.*—Filed Oct. 4, 1886.—Pa.

DEED CONSTRUED AS A MORTGAGE—INTENTION OF PARTIES—The intention of the parties to a deed may be shown, and wherever it is the purpose in the execution of the deed that it is given merely as security for the payment of a debt, it will be construed as a mortgage whatever may be the form of the deed. In *Rockwell* v. *Humphrey,* 57 Wis. 410, it is held that "the want of a personal agreement by the borrower to repay the money is not conclusive that the conveyance was not intended as a mortgage, but merely a circumstance to be considered with other evidence in the case."—*Scheiher* v. *Le Claire.*—Filed Oct. 12, 1886.—Wis.

DEED—CONSIDERATION MAY BE SHOWN BY PAROL EVIDENCE—The consideration in a deed may be shown by parol evidence. Where the grantee verbally agreed to pay an incumbrance, and the agreement not recited in the deed, parol evidence may be admitted to show that the payment of such incumbrance was a part of the consideration recited in the deed. The agreement as to the consideration necessarily precedes the execution of the deed, and the fact that the consideration was agreed upon some time prior to the execution or delivery of the deed does not deny the right to show the true conside-

ration.—*Hays* v. *Peck.*—Filed Sept. 17, 1886.—Ind.

DOWER—LAND SOLD AT JUDICIAL SALE—INCOHATE RIGHT OF DOWER—A judicial sale of property in which a married woman has an incohate right of dower, vests an absolute one-third of the property in the wife in fee. She becomes a tenant in common with the purchaser and has no right to redeem the same as against a mechanic's lien on the property prior to the sale, the lien takes precedence of the dower interest.—*Buser* v. *Shepard.*—Filed Sept. 21, 1886.—Ind.

ELECTIONS—CONTEST—INTENT OF THE VOTERS—Where the title of one elected to an office is contested by proceedings in the nature of a *quo warranto*, the ballots as cast by the voters must be held to express the intention of the voters, and a contrary intention cannot be shown by oral testimony. It is competent to show by oral testimonv that a *paster* had been used on a certain ballot, but had fallen off or been removed.—*Tobey* v. *McNeal.*—Filed Oct. 21, 1886.—Mich.

EVIDENCE—INCOMPETENT THOUGH NOT OBJECTED TO—EFFECT OF—Where evidence is admitted without objection, which if objected to would have been excluded, a verdict and judgment may be sustained thereby. Where an amendment of the complaint was admitted after the court had partly announced its findings, if the amendment in no way prejudiced the defendant, the supreme court will not on that ground disturb the judgment —*Judd* v. *Small.*—Filed Sept. 18, 1886.—Ind.

EVIDENCE—ACTION UPON A LEASE DELIVERED BUT NOT SIGNED—In an action upon a lease which was delivered to defendant and kept by him, but not signed, his expression as to acceptance or refusal of the lease when delivered to him are part of the *res gesta* and admissible as evidence. In Wright v. Boston, 126 Mass. 161, it is laid down as a rule that "when an act of the party is admissible in evidence, any declaration accompanying and giving character to the act is competent." Such declarations are only admissible when the acts of which they are a part are competent.—*Miles* v. *Stevens.*—Filed Oct. 23, 1886.—Mass.

EVIDENCE—PROOF OF SIGNATURE—INSTRUCTIONS—Where the signature of the defendant to a writing which is the basis of an action, is proved by a witness other than the defendant, the paper is admissible as evidence. An instruction that the testimony of one witness as to the bad character of an opposing witness should be considered in determining the weight of the testimony is error.—*Bulen* v. *Granger.*—Filed Oct. 21, 1886.—Mich.

EXEMPTION—FARMING UTENSILS—Where a threshing machine is owned by two or more farmers used in threshing their own grain, and also used in doing threshing for others for hire, it cannot be included under the head of farming implements which are exempt from levy and execution as implements of husbandry.—*In Re. Baldwin.*—Filed Sept. 23, 1886.—Cal.

EXECUTORS AND ADMINISTRATORS—IMPRISONMENT FOR NOT PAYING OVER MONEY BELONGING TO THE ESTATE—An administrator who has been found indebted to the estate and is imprisoned under the provisions of the statute in such cases made and provided, cannot be released on *habeas corpus.*—*In Re. Leahey.*—Filed August, 1886.—Vt.

FIRE INSURANCE—LIABILITY OF AN AGENT FOR WANT OF DILLIGENCE IN CANCELLING A POLICY.—Where an insurance agent is directed by the company to cancel a policy, and he neglects to do so, he may be held to answer for the loss occuring through his negligence. The question of his negligence is one of law and fact. Where it appears that the agent could have given notice to the insured in half an hour, and did not do so for several days, the court did not err in finding that the agent did not exercise due dilli-

gence.—*Phœnix Ins. Co.* v. *Frissell.*—Filed Oct. 22, 1886.—Mass.

FIRE INSURANCE—CONDITION PRECEDENT TO RECOVERY OF LOSS.—Where by the conditions of a policy of insurance certain proofs of loss must be made before the policy becomes due and payable, such requirements are a condition precedent and before an action can be maintained on the policy the assured must show that the conditions have been complied with or have been waived by the company.—*Ind. Ins. Co.* v. *Capehart.*—Filed Sept. 22, 1886.—Ind.

FIRE INSURANCE—KEEPING OF PETROLEUM ON THE PREMISES—Where a policy of insurance contains a covenant that the keeping on the premises of gun-powder, fire works, nitro-glycerine, or *petroleum*, the policy shall become void, the keeping of a barrel of petroleum on the premises to be used for fuel is a breach of the covenant and voids the policy.—*White* v. *Western Assur. Co.*—Filed Oct. 4, 1886.—Pa.

FIRE INSURANCE—PERPETUAL POLICY—INCREASE OF RISK—Where one has a policy of insurance in a mutual company to continue without express limitation, and the policy provides that if any change is made which will increase the risk, notice of the same must be given to the company. If the risk is increased and no notice given according to the terms of the policy, it is void.—*Rife* v. *Lebanon Mut. Ins. Co.*—Filed Oct. 4, 1886.—Pa.

FIRE INSURANCE—WAIVER OF LIMITATION—UNOCCUPIED BUILDING—Where the time in which an action may be commenced on a policy of insurance is incorporated in a policy and an action has been commenced in the United States court within the time limited, and subsequently the action is transfered by agreement of the parties to the state court, it will be presumed that there has been a waiver of the limitation. Such a removal from, or vacating of a building as will materially increase the risk, is held a vacation of the premises.—*Moore* v. *Phœnix Ins. Co.*—Filed July 30, 1886.—N. H.

FRAUDULENT CONVEYANCE—CONVEYANCE IN TRUST—OBLIGATION OF PARENT TO SUPPORT CHILD—A conveyance in trust for the support of the grantor and his wife, if made when he is solvent, is valid and not in fraud of creditors. Where a child lives with a parent, or a parent with a child, the law implies that the service rendered by the one or support rendered by the other was gratuitous in the absence of an express contract. —*Faloon* v. *McIntyre, Trustee.*—Filed Oct. 6, 1886.—Ill.

FRAUDULENT CONVEYANCE—SALE OF PROPERTY BY WIFE TO HER HUSBAND—Where a wife purchases personal property and sells it to her husband, taking his note, secured by chattel mortgage, in payment, the mortgage is valid and is not in fraud of creditors of the husband.—*Vandercook, Ex'x* v. *Gere.* —Filed Oct. 9, 1886.—Ia.

FORCIBLE ENTRY AND DETAINER—NOTICE TO QUIT—DESCRIPTION OF PREMISES—In an action of forcible entry and detention of real property it is sufficient if, in the notice to quit, the premises are substantially described. Where the notice to quit described the premises as a whole and a part was occupied by another, it was held sufficient.—*Dimmett* v. *Appleton.*—Filed Oct. 13, 1886.—Neb.

FRAUDULENT REPRESENTATIONS—SETTING ASIDE DEED—PREPONDERENCE OF EVIDENCE—In an action to set aside a deed on the ground of fraudulent statements by the seller, the fraud must be clearly established by a preponderance of evidence. If the weight of evidence on either side is equally balanced, the bill should be dismissed. The complainant failing to set the deed aside may have a remedy in some other action.—*Allison* v. *Ward.*—Filed Oct. 14, 1886.—Mich.

GAMING—ALLOWING MINORS TO PLAY—CONFLICT OF TESTIMONY—Where one is convicted for allowing a minor to play pool, and on the trial the two players testified that no inquiries were made as to their age before allowing them to play, and the proprietor and saloon keeper testified that inquiries were made and they declared they were of age, on appeal the supreme court will not reverse the judgment of conviction.—*Taylor* v. *State.*—Filed Sept. 25, 1886.—Ind.

GUARDIAN AND WARD—SALE OF LAND—DEFECTIVE NOTICE—Where the land of a ward is sold by his guardian under a decree of court, and it is subsequently found that the notice of sale was defective, if it appear that the land was sold in good faith, for a fair price, and that the interest of the ward did not suffer by the sale, it will not be set aside, nor can the ward maintain an action on a writ of entry for recovery of the land. —*Nott* v. *C. T. S. Mfg. Co.*—Filed Oct. 22, 1886.—Mass.

GUARDIAN AND WARD—LEAVE OF COURT TO MAKE INVESTMENTS—A guardian, in making investments for his ward, must obtain the sanction and approval of the court before making the investment, otherwise he will be held individually responsible for the loss, if any occurs. He cannot sheild himself from liability upon the plea that he made the investment in good faith.—*Osborne* v. *Munroe.*—Filed Oct. 9, 1886.—N. J.

HOMESTEAD—MORTGAGE—NON-JOINDER OF WIFE—A party, a married man, executed a mortgage on his homestead in which his wife did not join, and was subsequently divorced. After being divorced he conveyed the land to another with notice of the mortgage, which the grantee agreed to assume. *Held*, that the land was primarily liable for the debt, and the grantee was estopped from denying the validity of the mortgage.—*Alt* v. *Banholzer.*—Filed Oct. 13, 1886.—Minn.

HUSBAND AND WIFE—EVIDENCE OF MARRIAGE.—Cohabitation and reputation of marriage raise a presumption of marriage in fact, but this presumption may be rebutted by other evidence. Cohabitation which is illicit in its commencement will be presumed to continue to be illicit, and marriage subsequently must be proved.—*Appeal of Reading Fire Ins. Co.*—Filed Oct. 4, 1886.—Pa.

HUSBAND AND WIFE—WIFE'S SEPARATE ESTATE—Work done for a married woman relating to her separate estate cannot be charged to her estate unless it appears that it was necessary or for the improvement of her estate. To sustain a common law action against the husband and wife, to charge the separate estate of the wife, facts must be averred and proved sufficient to bring the case within the statute.—*Fenn* v. *Earley.*—Filed Oct. 4, 1886.—Pa.

HUSBAND AND WIFE—SEPARATE EARNINGS OF THE WIFE—Where a married woman has filed her petition to secure to herself her own separate earnings, when ordered filed and recorded such record shall be conclusive evidence of her right to her separate earnings, whether the same be for wages, for property or otherwise, and such property of the wife is not subject to seizure for the husband's debts.—*Spering* v. *Laughlin.*—Filed Oct. 4, 1886.—Pa.

HUSBAND AND WIFE—TORTS COMMITTED BY WIFE—WHEN THE HUSBAND IS LIABLE—If a tort be committed by a wife in the presence of her husband, the presumption is that it is done by the coercion of the husband, and he is liable, but if committed in his absence no such presumption arises and he is not liable.—*Appeal of Franklin, Admr.*—Filed Oct. 4, 1886.—Pa.

HUSBAND AND WIFE—RIGHT OF DOWER—DIVORCE—Where a wife obtains a divorce from her husband on account of his misconduct, she is entitled to dower in his estate, the same as though he were dead, and while in possession of a portion of the premises may maintain ejectment to recover her dow-

er. After judgment in her favor the circuit court may proceed to admeasure the dower as in probate proceedings.—*Rea* v. *Rea.*—Filed Oct. 21, 1886.—Mich.

HUSBAND AND WIFE—JOINT NOTE BY—LAND PURCHASED AND DEEDED TO THE WIFE—Where a husband applied for and obtained a loan of money which he applies as purchase money on real property, and with the consent of all parties the land purchased is conveyed to the wife, and for the money loaned the husband and wife unite in making a judgment note for the amount. Judgment being entered on the note and the property sold on execution, in an action of ejectment it is *held* that the judgment as against the wife was null and void, and ejectment cannot be maintained.—*Bigler* v *Wilson and wife.*—Filed Oct. 18, 1886.—Pa.

INSURANCE—OWNERSHIP—DEED DELIVERED IN ESCROW—In an action upon a policy of fire insurance where the company sets up a defense that the insured was not the owner of the property, it is sufficient in establishing the ownership to show that the deed had been delivered in escrow.—*Pangborn* v. *Continental Ins. Co.*—Filed Oct. 7, 1886.—Mich.

INSURANCE—OTHER INSURANCE A CONDITION OF FORFEITURE—Where a policy of insurance contains a condition that additional insurance taken without the consent of the company shall void the policy, other insurance being taken with the knowledge and consent of an agent of the company, and without notice to the company will render the policy void.—*Robinson* v. *Fire Association.*—Filed Oct. 14, 1886.—Mich.

INSURANCE—SUSPENDING A POLICY ON A MILL BY STOPPING FOR REPAIRS—Where it is provided in the issuing of an insurance policy on a mill that if the mill be shut down for more than 20 days for any cause, without notice to the company, it shall void the policy, and if the mill is shut down for necessary repairs the policy is thereby forfeited—*Day* v. *Mill Owners's Ins. Co.*—Filed Oct. 14, 1886.—Iowa.

INTOXICATING LIQUOR—ILLEGAL SALE OF BY A SERVANT—Where one employed as bar keeper in a saloon sells liquor illegally, it cannot be presumed that the sale was authorized by the master, so as to overcome the presumption of innocence. The fact that a man employs a servant to conduct a business expressly authorized by statute, and that the servant makes the unlawful sale in the course of it, do not necessarily overcome the presumption of innocence, merely because the business is liquor selling, and may be carried beyond the statute limits.—*Commonwealth* v. *Bryant.*—Filed Oct. 21, 1886.—Mass.

INTOXICATING LIQUORS—REJECTION OF A SURETY BOND—In an action to compel the township board to accept a liquor dealer's bond which they had rejected, it was shown that some of the witnesses called had estimated the property of the surety as of sufficient value, and others had placed it at a value which was insufficient. *Held*, that the board was presumed to have exercised good judgment and acted properly in the matter, and that they could not disregard the testimony before them.—*DeGraff* v. *Byles.*—Filed Oct. 7, 1886.—Mich.

INSTRUCTIONS—HOW CONSTRUED—It is for the court to instruct the jury on all points of law involved in the case, and leave the jury to find the facts. The instructions must be construed as a whole, and if taken all together they are correct, the fact that the instruction on one point, if taken alone, would be error, does not invalidate the whole.—*Bartling* v. *Behrends.*—Filed Oct. 13, 1886.—Neb.

IMPANNELING JURY—DISOBEYING THE REQUIREMENTS OF THE STATUTE—Where the county clerk mixed the packages containing the list of grand and petit jurors in violation of the statute, and drew the jurors promiscuously from the box, the court was authorized in discharging the pannel entirely.—

Atkinson v. *Morse*,—Filed Oct. 21, 1886.—Mich.

JUDGMENT—EFFECT OF TRANSFER TO ANOTHER COUNTY—A judgment transfered from the county where originally entered, to another county, has the same effect as if originally entered in the county to which it is transfered, but no *fi. fa.* or proceedings can be had on it which could not be had in the county where originally entered.—*Beck* v. *Church, Admr.*—Filed Oct. 4, 1886 —Pa.

JOINT TENANTS—REDEMPTION FROM TAX SALE BY ONE TENANT—Property owned by joint tenants and mortgaged by them, the mortgage being foreclosed and the land sold, the property cannot be redeemed by one of the joint tenants to the exclusion of the other. A redemption by one inures to the benefit of the other also.—*Holterhoff* v. *Mead.*—Filed Oct. 11, 1886.—Minn.

JUSTICE OF THE PEACE—AN AGREEMENT TO RECEIVE A CONDITIONAL FEE—Where a justice agrees with plaintiff or plaintiff's attorney that certain suits for the collection of debts may be carried on before him and his usual fees shall be paid him only in case the plaintiff is successful in the collection of the debt, it is in violation of judicial duty and void. An action cannot subsequently be maintained against the plaintiff for the costs. —*Willemin* v. *Bateson.*—Filed Oct. 21, 1886.—Mich.

JUDGMENT BY CONFESSION—JUDGMENT NOTE—Where a party signed a note for a given sum which concluded with these words, "and I hereby confess judgment for the said amount," and an attorney appeared in court and confessed judgment on the note, it is *held* to be regular and valid.—*James* v. *Crownover.*—Filed Oct. 4, 1886.—Pa.

JURY TRIAL—ACTION AGAINST A TOWNSHIP TREASURER—REFERENCE—In an action at law, against a township treasurer, to recover moneys wrongfully appropriated by him, the court cannot order a reference against the objection of defendant, but may proceed to trial by a jury—*Grant Township* v. *Bulles.*—Filed Oct. 13, 1886.—Ia.

LANDLORD AND TENANT—LEASE OF LAND ON SHARES—ATTACHMENT OF CROPS—Where one leases land on the shares, and during his tenancy assigns his interest in the growing crops, such assignment is good and vests the title to his interest in the land and growing crops in the assignee and an attachment of the crops by a creditor of the lessee after the assignment will not lie, although the lessee remain in possession of the land.—*Walworth* v. *Jenness.*—Filed 1886.—Vt

LANDLORD AND TENANT—EVICTION—OCCUPANCY BY THE LANDLORD IN THE ABSENCE OF THE TENANT—A tenant occupying certain premises under a lease being temporarily absent, the lessor entered the premises and removed the tenant's goods and occupied the premises, continuing to occupy them without objection by the tenant. *Held* that the lessor's occupancy amounted to an eviction and suspended the rent.—*Burr* v. *Cattnach.*—Filed Oct. 4, 1886.—Pa.

LANDLORD AND TENANT—NOTICE TO QUIT—TENANCY AT WILL—Where one sold a a house with a reserved privilege of occupying it for three months, if he occupies it longer than the time stipulated he becomes a tenant at will and is entitled to three month's notice to quit, unless there was an agreement to pay rent at shorter intervals.—*Hoffman* v. *Clark.*—Filed Oct. 14, 1886.—Mich.

LARCENY—FINDING THE GOODS OF ANOTHER, AND KNOWING THE OWNER, KEEPS IT —The statute provides that "If any person come, by finding, to the possession of any personal property of which he knows the owner, and unlawfully appropriates the same or any part thereof to his own use, he is guilty of larceny." Where one found a pocket book containing money, knowing the owner, appropriated the money to his own use, and two weeks afterwards returned the

owner the amount found, *Held*, that he is guilty of larceny.—*State* v. *Bolander*.—Filed Oct. 15, 1886.—Ia.

LARCENY—SUFFICIENCY OF COMPLAINT—A complaint charging defendant with having purchased stolen goods, knowing them to be stolen, which charges that defendant did *unlawfully* buy and receive such goods *contrary to the statute*, in such cases made and pro vided, sufficiently charges the crime although it does not in express terms aver that the goods were stolen "from another."—*State* v. *McLaughlin*.—Filed Oct. 7, 1886.—Kans.

LIEN FOR WAGES DUE—CERTIFICATE OF EMPLOYER TRANSFERED, DELIVERED UP AND A NOTE TAKEN THEREFOR—Under the statute a laborer has a prefered lien for wages in case of insolvency, but such lien does not take effect until insolvency occurs. Where an employer issues certificates for wages due to an employe, and he assigns the same for value, and the assignee presents the certificate for payment, and in payment a promissory note is taken, the certificate is thereby cancelled and the prefered lien in case of insolvency cannot afterward attach.—*Montgomery's Appeal, et. al.*—Filed Oct. 4, 1886.—Pa.

LIFE INSURANCE—INSURABLE INTEREST—PAYMENT OF POLICY—Where one has insured his life in favor of one who has no insurable interest in the life assured, and after death the company has paid the amount to the party named in the policy, it cannot be again compelled to pay the policy to the administrator of the estate of deceased.—*Bomberger, Ex.* v. *N. B. Mut. Aid Soc.*—Filed Oct. 4, 1886.—Pa.

LANDLORD AND TENANT—LEASE OF OIL LAND—Where land is leased for the privilege of drilling for oil, and the lease provides that if oil is not found within four years the lease shall be void, if oil is not found within the time, but gas is found, that does not save the lease. Oil and gas are not synonymons.—*Truby* v. *Palmer*.—Filed Oct. 4, 1886.—Pa.

LIFE INSURANCE—INSURABLE INTEREST—SUPPORT OF INSURED FOR LIFE—Where a party contracted to support another for life, in consideration of a life policy made payable to him, it is *held* that he had an insurable interest in the life of the party supported to the extent of the amount expended for that purpose. The rule established respecting the insurable interest that one may have in the life of another, is founded in public policy.—*Siegrist, Admr.* v. *Schmoltz*.—Filed Oct. 4, 1886.—Pa.

MANDAMUS—RIGHT TO INSPECT THE BOOKS OF A CORPORATION—A stockholder desiring to protect himself against fraud, by showing a *prima facie* case of fraud, is entitled to inspect the books of the corporation, and for that purpose may have a writ of mandamus, compelling access to the books if his action is brought in good faith.—*Phœnix Iron Co.* v. *Sellers*.—Filed Oct. 4, 1886. Pa.

MASTER AND SERVANT—CONTRACT OF AN EMPLOYE WAIVING DAMAGES FOR INJURY—A railroad company cannot limit its liability for injury caused to an employe through carelessness of one in authority, by making a contract with the employe whereby he waives his right to damages for such injury. The liability of the company for such injuries is founded in public policy and cannot be waived by contract.—*L. S. & M. S. Ry. Co.* v. *Spangler*.—Filed Oct. 19, 1886.—O.

MASTER AND SERVANT—CONTRACT OF HIRING—CUSTOM—Custom, however long established and continued, cannot change an express contract. Where a salesman was employed at a fixed salary per month exclusive of traveling expenses, and the employe returned at sundry times to the employer's office, keeping his sample goods in his personal charge, it is *held* that the employer was bound to pay the employe's expenses while remaining at the home office, although the custom was, among the same class of merchants, not to do so. The custom being only to pay the expenses of the employe while on

the road.—*Lamb* v. *Henderson.*—Filed Oct. 21, 1886.—Mich.

MALICIOUS PROSECUTION.—PROBABLE CAUSE—POSSESSION OF STOLEN PROPERTY—One found in possession of stolen property the day after it is stolen, in the absence of a reasonable explanation of how he came into possession of it, is presumed to be guilty of the theft. In an action for malicious prose cution the question of probable cause is a question for the jury.—*Johnson* v. *Miller.*—Filed Oct. 15, 1886.—Ia.

MASTER AND SERVANT—AGREEMENT OF SERVICE FOR A SPECIFIC TERM—Where an employe is engaged for a specified term and it is stipulated that he cannot leave before the end of the term without giving certain notice, on penalty of forfeiting his wages earned, if his employer reduces his wages he may leave without notice and yet recover the wages earned. The reduction of wages by the employer is a breach of the contract. —*Schietenger* v. *Bridgeport Knife Co.*—Filed July, 1886.—Conn.

MECHANICS LIEN—PREMATURELY BROUGHT NO BAR TO ANOTHER ACTION—Where an action is brought to foreclose a mechanics lien prematurely, and for that reason is dismissed, it is no bar to another action for the same purpose brought within the specified time allowed by statute. An action for such purpose must be brought within one year from the time the building is completed.—*Seaton et. al.* v. *Hixon.*—Filed Oct. 8, 1886. —Kans.

MECHANICS LIEN—CONSOLIDATION OF TWO OR MORE LIENS—CLAIMS PAID BY CORPORATE STOCK—When two or more persons have a mechanics lien against the same property, in an action to foreclose, the liens may be consolidated in one action and the rights of the parties adjudicated. Where the lien is held against the property of a corporation and the president of the corporation gives his note for the debt, and the corporation issues stock to the president in payment for his individual note so given, this does not discharge the lien against the corporate property.—*Allis* v. *Distilling Co.* —Filed Oct. 12, 1886.—Wis.

MUNICIPAL CORPORATIONS—ANNEXATION OF TERRITORY TO A TOWN—Where territory is legally annexed to a town the debts of the town attach to the territory annexed, and although subsequently another town be erected out of territory originally in the old town, this will not affect the liability of the territory so annexed respecting the debts of the old town.—*Schriber* v. *Langlade.*—Filed Oct. 12, 1886.—Wis.

MUNICIPAL CORPORATION—CHANGE IN GRADE OF STREET—DAMAGES—In an action against a city for damages arising from a change in the grade of a street the plaintiff must show title to the lot injured and possession of the same. Before a city can proceed to change the street grade the damages must be assessed and tendered to the owner of the property damaged.—*La Fayette* v. *Wootman.*—Filed Sept. 21, 1886.—Ind.

MUNICIPAL CORPORATIONS.—LOCAL IMPROVEMENTS—PARTICIPATING IN THE ELECTION OF COMMISSIONERS—Where a petition has been signed praying for the improvement of a street, and subsequently commissioners are chosen to carry out the improvements, a property owner who participates in the selection of commissioners will be presumed to have assented to the improvements although he may have signed a remonstrance against the same.—*Columbus* v. *Slyh.*—Filed Oct. 19, 1886.—Ohio.

MUNICIPAL CORPORATION—LIABILITY FOR PERMITTING OBSTRUCTION TO REMAIN IN STREET—Where an obstruction, calculated to frighten a gentle horse, is allowed to remain in the street, the city is liable for damages arising therefrom. In an action for damages where a horse has been thus freightened, it is necessary for the plaintiff to aver and prove that the horse was of or-

dinary gentleness and that the obstruction was calculated to frighten a horse of that character.—*Rushville* v. *Adams.*—Filed Sept. 23, 1886.—Ind.

MUNICIPAL CORPORATIONS.—LIABILITY FOR A TORT CAUSED BY AN AGENT—A city is not liable for a tort committed by one of its public officers, but where one is appointed especially to superintend certain work, the city may be held to answer for a tort or injury caused by his negligence. Where it is clearly shown that a public work was not properly constructed, it is not error for the court to instruct that it was the duty of the city to construct the work suitable for the purpose intended.—*Mulcairns, Admx.* v. *Janesville.*—Filed Oct. 12, 1886.—Wis.

MUNICIPAL CORPORATION.—MISTAKE OF CITY ENGINEER—LIABILITY OF CITY—Where it is made the duty of a city engineer, by ordinance, to report to lot owners the grade of the street in front of the lot, and he makes a mistake to the damage of the owner, the city is not liable for the mistake. The benefit, if any, accrues to the lot owner and not the city.—*Waller* v. *City of Dubuque.*—Filed Oct. 14, 1886.—Ia.

MUNICIPAL CORPORATION—APPOINTMENT OF FIRE ENGINEER OF COLUMBUS—POWER OF THE MAYOR—The city ordinance provides for the appointment of a fire engineer by the mayor, by and with the advice and consent of the city council, and when an engineer has been appointed in accordance with the provisions and given bond and entered upon the duties of his office, the mayor has no power to declare the office vacant. He continues in office until his successor is appointed and qualifies.—*State* v. *Bryson* —Filed Oct. 19, 1886.—Ohio.

MUNICIPAL CORPORATION—INSUFFICIENCY OF NOTICE OF INJURY—Where one has suffered injury by reason of a defective roadway, and has given notice to the selectmen of the town of his intention to bring an action against the town for damages, and there is a question of the sufficiency of such notice, conversation had with selectmen may be shown as bearing upon the fact that the notice was understood, and such conversations may cure the defective notice.—*Fortin* v. *Easthampton.*—Filed Oct. 1886.—Mass.

MUNICIPAL CORPORATION—CONTRACT FOR SUPPLY OF CITY WATER—Where a city is authorized by its charter to provide for a supply of water from year to year, and the city council enters into a contract for a term of years for a water supply, such contract is within its powers, although the charter provides that the council may provide for a supply from year to year.—*Water Works Co.* v. *Atlantic City.*—Filed Oct. 20, 1886.—N. J.

MUNICIPAL CORPORATION—LIABILITY FOR INJURIES FROM A DEFECTIVE SIDEWALK—WALK CONSTRUCTED BY PROPERTY OWNER—The fact that a sidewalk in front of a lot was constructed by the lot owner without instruction or authority from the city does not relieve the city from liability for an injury caused by a defect therein. It is the duty of the city to see to it that the sidewalk is kept in proper repair.—*Plattsmouth* v *Mitchell.*—Filed Oct. 6, 1886.—Neb.

MUNICIPAL CORPORATION—INJURY CAUSED BY DEFECTIVE CULVERT—NEGLIGENCE—Where a plank covering a culvert was warped and permitted to remain in an imperfect condition for a period of three months, and a party living near by and having frequently seen the defective condition of the same, and in attempting to cross on the plank when it seemed to be in good condition, was injured, *held*, that in an action for damages the question of negligence was properly left to the jury.—*Kingston* v. *Gibbons.*—Filed Oct. 4, 1886.—Pa.

MUNICIPAL CORPORATION.—POLICEMAN ABSENT FROM DUTY ON ACCOUNT OF SICKNESS—An ordinance provided that a policeman should forfeit his pay if absent without

leave, "except in case of sickness when properly certified by a physician." A policeman having been absent on account of sickness and failing to furnish the certificate of a physician cannot recover his salary. The physician's certificate is a condition precedent to recovery.—*Wilkes Barre* v. *Meyers.*—Filed Oct. 4, 1886.—Pa.

MORTGAGE—ASSIGNMENT FOR THE BENEFIT OF CREDITORS—A minor son of plaintiff sold a printing press in the plaintiff's absence and took the note and a chattel mortgage in payment for the same in his own name. He subsequently promised to assign the note and mortgage to plaintiff but failed to do so. The firm of which the son was a member made an assignment and the assignee foreclosed the mortgage. *Held*, in an action by plaintiff for a reformation of the mortgage, that he was entitled to have the same reformed and assigned to him.—*Wait* v. *Oxford.*—Filed Oct. 21, 1886.—Mich.

MORTGAGE—TRANSFER OF PART OF THE MORTGAGE NOTES—STATUTE OF LIMITATIONS A mortgagee having transfered a part of a series of notes secured by a mortgage, agreeing to hold the mortgage in trust for the security of the same, upon cancelling the balance of the notes remaining in his hands he does not thereby cancel the mortgage, and although the statute of limitations may have run as to the notes, an action may be maintained on the mortgage.—*Norton* v. *Palmer.*—Filed Oct. 21, 1886.—Mass.

NEGLIGENCE—INJURY WHILST CROSSING A BRIDGE—CONTRIBUTORY NEGLIGENCE—A company owning a toll bridge is charged with negligence resulting in the death of a child. It appeared that the bridge was in a safe condition for ordinary travel. A child accompanied by its brother was crossing the bridge and attempted to walk on a gas pipe instead of in the roadway, and fell and was killed. In an action for damages the defendant asked the court to charge that under all the evidence the plaintiff ought not to recover, which the court refused to do. *Held*, that the court erred in refusing this instructoin. Where the negligence of a child is the result of the parent's permission, such negligence is contributory.—*O. C. & P. Bridge Co.* v. *Jackson.*—Filed Oct. 18, 1886.—Pa.

NEGLIGENCE—A BY-STANDER INJURED BY THE FALLING OF A DOOR FROM A FREIGHT CAR—Where the door of a passing freight car falls from its place and injures a person near by it does not raise a presumption of negligence on the part of the company unless it be shown that the door had been in a defective condition so long as to raise a presumption that the company knew of its condition.—*Case* v. *G. R. I. & P. Ry. Co.*—Filed Oct. 8, 1886.—Iowa.

NEGLIGENCE—INJURY WHILE DRIVING ON A HIGHWAY—CONTRIBUTORY NEGLIGENCE—In an action against a town for injury received while driving along a highway where the town had excavated a ditch at one side of the highway, it was shown that the father and son were on the wagon, the father being intoxicated he drove the team into the ditch and the son was killed. *Held*, that the question of contributory negligence was a question for the jury.—*Seymer, Admr.* v. *Town of Lake.*—Filed Oct. 12, 1886.—Wis.

NEGLIGENCE—SOUNDING THE WHISTLE OF THE ENGINE IN APPROACHING A HIGHWAY CROSSING—It is the duty of a railroad engineer to sound the whistle in approaching a crossing of a highway, and failure to do so is negligence of the company, which makes it liable for injury occurring at the crossing. The fact that the engine was seen at a distance does not releive the company of its duty.—*M. P. Ry. Co.* v. *Stevens.*—Filed Oct. 7, 1886.—Kans.

NEGLIGENCE—INJURY TO AN EMPLOYE IN GAS WORKS BY REASON OF DEFECT IN THE WORKS—An employe in gas works being ordered to do certain work was required to go where he inhaled poisonous gas, and in con-

sequence fell to the ground and was killed. *Held*, that the company was liable on account of negligence in not having their works in proper repair.—*Citizens G. & H. Co.* v. *O'Brien, Admr.*—Filed Oct. 6, 1886.—Ill.

NEGLIGENCE—INJURY TO AN EMPLOYE—DEFECTIVE MACHINERY—Where an employe engaged in making sizing was injured, causing his death, by the escape of steam from a boiler with which he was working in his employment, it is *held* that his administrator could not maintain an action for damages against the employer in the absence of negligence on the part of the defendant, or showing that he knew the boiler to be defective.—*Blanchette, Admr.* v. *B. C. Mfg Co.*—Filed Oct. 29, 1886.—Mass.

NEW TRIAL—WEIGHT OF EVIDENCE—REVIEWED BY THE SUPREME COURT—In a motion for a new trial on the ground of newly discovered evidence, where the testimony of witnesses in support of and against the motion is conflicting, the supreme court will not grant a new trial. Where the evidence touching a certain question is conflicting, it is addressed exclusively to the court considering the question.—*De Hart* v. *Aper.*—Filed Sept. 23, 1886.—Ind.

NOTE MADE BY AN OFFICER OF A CORPORATION—ANNEXING TO HIS SIGNATURE THE TITLE OF HIS OFFICE—Where a promissory note which reads "we" promise to pay and is signed by the treasurer of a corporation, to which he annexes his title as treasurer, does not make it the note of the corporation. It is the signer's individual note. An action brought on the note against the corporation does not bar a subsequent action against the individual.—*McClure* v. *Livermore.*—Filed Oct. 1, 1886.—Maine.

NUISANCE—OBSTRUCTING THE SIDEWALK WHO MAY RESTRAIN—Where an obstruction is about to be placed in the street or on sidewalk, a lot owner whose lot is not opposite to the proposed obstruction cannot have an injunction restraining the same, as the injury, if any, which he sustains, is the same as the public in general.—*Billiard* v. *Erhardt.*—Filed Oct. 7, 1886.—Kans.

PARTNERSHIP—PAYMENT OF OLD DEBTS OF ONE PARTNER—Where a debtor forms a a partnership with his creditor, and the articles of partnership provide for the payment of the debt of the partner out of the proceeds of the firm, if the creditors of the firm have knowledge of the articles of co-partnership, they may enforce the agreement against the debtor's partner.—*Zell's Appeal.*—Filed March 29, 1886.—Pa.

PARTNERSHIP——DISSOLUTION OF—ONE PARTNER WRONGFULLY SIEZING PARTNERSHIP PROPERTY—Where one partner wronfully seizes partnership property and appropriates it to his own use, and an action is brought for an account and for winding up the partnership business, the wrongful conversion of the property cannot be made a part of or joined in the action for an account.—*McCraw* v. *Dole.*—Filed Oct. 7, 1886.—Mich.

PRINCIPAL AND AGENT—CONTRACT OF AGENT WITHOUT AUTHORITY—Where one made a contract with the chief engineer of a railway company for the construction of all the depots on the line, and in an action it was shown that the company had entrusted all that line of work to another party, and not the engineer, the case was properly withdrawn from the jury, as the plaintiff had no standing in court.—*Bond* v. *P. O. & P. A. Ry. Co.*—Filed Oct. 7, 1886.—Mich.

PRINCIPAL AND SURETY—REQUEST TO SUE PRINCIPAL—Where a surity requests principal to proceed to the collection of the debt, the neglect or refusal of the principal to do so will not discharge the surety unless the request was accompanied by a specific notice that the surety would insist upon a release if he did not proceed at once against the debtor.—*Kennedy* v. *Falde.*—Filed Oct. 6, 1886.—Dak.

PLEADING—WHEN DEFENDANT MAY ANSWER OR FILE A CROSS-BILL—A bill filed, which in form is in violation of a rule of court, will be reformed and made to conform to the rule. Where a defendant seeks affirmative relief he should file a cross-bill, but where the defense is negative he must answer. Where the defense is payment, answer is the proper method.—*Raelble* v. *Goebbel.*—Filed Oct. 14, 1886.—N. J.

PLEDGE OF COLLATERAL—MORTGAGE—JUDGMENTS OF RECORD—Where one took assignment of a mortgage for a valuable consideration, and subsequently in like manner took an assignment of judgments against the owner and mortgagor, and after the death of the mortgagor, his administrator, by order of court, sells the real estate and pays or tenders the mortgagee the amount due under the mortgage and the judgments, *Held* that the payment of the debt extinguished the claim of the mortgagee.—*Burd* v. *Keyser.*—Filed Oct. 13, 1886.—N. J.

PRINCIPAL AND AGENT—SERVICES OF A NURSE EMPLOYED BY A PHYSICIAN—Where an employe of a railway company was injured, and a physician is called by the company to attend the injured employe, and the physician employs a nurse to take care of the injured man. *Held* that the company is not liable for the services of the nurse unless the physician was specially authorized to employ hlm.—*Bushnell* v. *C. & N. W. Ry. Co.*—Filed Oct. 21, 1886.—Ia.

PRINCIPAL AND AGENT—UNDISCLOSED PRINCIPAL LIABLE—Where an agent enters into a written contract with another in his own name, if in fact he made the contract as the agent of another, such agency may be shown by parol, and the contract may be enforced against the principal the same as though the agent had disclosed his principal in the contract—*Kirschbon* v. *Bonzel.*—Filed Nov. 3, 1886.—Wis.

PUBLIC OFFICER—EXPENDING HIS PRIVATE FUNDS FOR BUBLIC USE MUST BE REIMBURSED—The necessary and reasonable expenditures in the discharge of his duty by a public officer, is ground for an action for a recovery of the same by the officer. See 37 N. J. Law, 254; and 38 N. J. Law, 434. His claim for recovery of money expended cannot be based on his success in resisting an encroachment on the rights of the city of which he is an officer, but must be based on his relations to the public for whom he acts. A claim presented to the board of aldermen and referred to the finance department, and by that department approved, raises a presumption of an express promise to pay the same.—*Barnett* v. *Mayor of Patterson.*—Filed Oct. 13, 1886.—N. J.

RAILWAY COMPANY—TAKING OF LAND UNDER THE CODE—In taking of land by a railway company under the code, either party has a right to appeal within thirty days. The thirty days limit begins to run from the time the notice of the assessment is given to the parties, or made public. The time when an assessment of damages was made may be shown by one or more of the commissioners who made the assessment.—*Jamison* v. *B. W. Ry. Co.*—Filed Oct. 23, 1886.—Ia.

RAILWAY COMPANY—PASSENGER THROWN FROM A CAR BY OTHER PASSENGERS—LIABILITY OF COMPANY—Where a railway company furnished open platform cars for the transportation of an excursion party, and some drunken and quarrelsome men on one of the cars quarreled with a fellow passenger, and finally threw him off the car, killing him instantly. *Held*, that the company was not liable in the absence of knowledge that by furnishing such cars would lead to such results.—*Felton, Admr.* v. *C. R. I & P. Ry. Co.*—Filed Oct. 14, 1886.—Ia.

RAILWAY COMPANIES—OCCUPYING STREETS OR ALLEYS IN A BOROUGH—Under the statute enacted in 1849 and 1868, a railway company may occupy a street or an alley in a borough for the right of way, but it may

not occupy a street or public highway longitudinally for the laying of their track. Whatever is ambiguous or uncertain in the charter of a corporation is construed as certain against a corporation.—*Penn. Ry. Co.'s Appeal.*—Filed Oct. 4, 1886.—Pa.

POOR AND POOR LAWS—PAUPER OBTAINING A SETTLEMENT—The question of residence is partly one of intention, and the declarations of party in leaving one town to settle in another are admissible as evidence on the question of settlement. No one can become a member of another family without the consent of the head of the family.—*Inhabitants of Etna* v. *In. of Brewer.*—Filed Sept. 28, 1886.—Me.

PRINCIPAL AND SURETY—REQUIRING CREDITOR TO PROCEED AGAINST THE PRINCIPAL—A simple request by the surety that the creditor proceed against the principal is not sufficient to discharge the surety when disregarded. Where the surety wrote the creditor a letter saying to him that he had better proceed against the principal, *Held* insufficient to release the surety.—*Kennedy* v. *Falde.*—Filed Oct. 6, 1886.—Dak.

RAILWAY COMPANY—RIGHT OF WAY—INTEREST OBTAINED—Where a railway obtains land for the right of way, the company obtains an easement only, whether obtained by condemnation proceedings or otherwise. Where the owner of land conveys to the company by deed *for the purpose of the right of way*, the interest conveyed is only an easement, and upon non-user the land will revert to the grantor.—*Brown* v. *Young.*—Filed Oct. 21, 1886.—Ia.

RAILWAY COMPANY—CONDEMNATION PROCEEDINGS—EVIDENCE—In an action for the condemnation of land by a railway company, the records of conveyances of other lots of land near by are not competent evidence by which to prove the value of the land about to be condemned. In such action the land owner cannot read on the trial the notice of appeal of the railway company in which is stated a sum awarded by commissioners.—*Seefield* v. *C. M. & St. P. Ry. Co.*—Filed Nov. 3, 1886.—Wis.

RAILROAD COMPANY—INJURY TO AN EMPLOYE—LIABILITY OF THE COMPANY—Where an employe is started on a hand-car, on the track, and he knows that an engine is to follow him, but is told by the engineer, when he starts, that the engine will not start for fifteen minutes, but it is actually started in ten minutes, and overtakes the hand-car and injures the employe, *Held* that the company is liable for the injury.—*Hawley* v. *C. B. & Q. Ry. Co.*—Filed Oct. 21, 1886.—Ia.

RAILROAD COMPANY—CONDEMNATION OF LAND—APPEAL FROM AWARD—Where an award of damages has been rendered for land condemned by a railway company, and an appeal taken from the award, the sum awarded bears interest from the date of the award, if the premises have been vacated by the tenant. An expert witness called in a condemnation case may be cross-examined as to the value of other land in the vicinity, for the purpose of impeaching him.—*Minocke* v. *C. M. & St. P. Ry. Co.*—Filed Nov. 3, 1886.—Wis.

RAILROAD COMPANY—INJURY AT CROSSING OF A HIGHWAY—Where a freight train in backing up across a highway-crossing ran upon and caused the death of one, and in an action by his administrator to recover damages therefor, the testimony was conflicting as to whether the bell on the engine was rung or not, and as to whether there was a switchman at the crossing with a light or not. The trial judge ordered a verdict for the defendant. On appeal it is *held* that to direct a verdict for the defendant was error. The question should have gone to the jury.—*Hoye, Admr.* v. *C. & N. W. Ry. Co.*—Filed Oct. 12, 1886.—Wis.

RAILROAD COMPANIES—RIGHT TO CONDEMN LANDS FOR DEPOT PURPOSES—Where

the business of a railway corporation become such that an enlargement of the depot grounds becomes necessary, this is sufficient to justify the company in condemning land to be used for that porpose. It is not necessary that the land be immediately needed for use. It is sufficient if the natural and inevitable growth of the business will make the improvements necessary in the future.—*In Re. Rapid Transit Co.*—Filed Oct. 5, 1886.—N. Y.

RAILROAD COMPANIES—CONDEMNATION PROCEEDINGS—NOTICE TO INTERESTED PARTIES—Where land is taken by a railway company by right of eminent domain, all parties interested in the land should have notice of the proceedings, and if the land be taken, damages assessed and paid to the legal owner, a mortgagee who has had no notice of the proceedings can still assert the lien of his mortgage upon the land.—*Dodge* v. *& S. W. Ry. Co.*—Filed Oct. 27, 1886.—Neb.

RAILROAD COMPANY—ENGINE HOUSE ERECTED ADJACENT TO A PRIVATE DWELLING—The erection of an engine house close to a private dwelling is a nuisance for which an action will lie. A statutory sanction cannot be pleaded in justification of acts which constitute a nuisance to private property, unless expressly authorized by the statute.—*Cogswell* v. *N. Y. & N. H. & H. R. R. R. Co.*—Filed Oct. 3, 1886.—N. Y.

RAILROAD STOCK—DECLARING A DIVIDEND WHILE A DEFICIENCY EXISTS—Where a railway company is financially embarrassed, and by act of the legislature it is empowered to issue preferred stock to a certain amount, the company may do so, and in declaring a dividend it may disregard the deficiency notwithstanding the general statute forbids its doing so.—*Cotting* v. *N. Y. & N. E. Ry. Co.*—Filed July 20, 1886.—Conn.

RAILROAD COMPANY—SERVICE OF PROCESS ON A CONDUCTOR—NAME OF CORPORATION—Where process is served on a conductor of a railway train, it is not absolutely necessary that the return should show the full name of the conductor so served. It is not essential to the validity of a complaint that there shall be an express averment that defendant is a corporation. Where the defendant is a railroad company it is sufficient to set out the name of the railway company.—*C. H. & I. Ry. Co.* v. *McDougall.*—Filed Oct. 8, 1886.—Ind.

REDEMPTION FROM FORECLOSURE SALE—WHEN IT MAY BE HAD AND BY WHOM—A judgment creditor is given the right to redeem from a foreclosure sale after six months and before nine months from the date of sale, and an assignee of the judgment creditor can do the same that the creditor himself could have done.—*Hurn* v. *Hill.*—Filed Oct. 26, 1886.—Ia.

REMOVAL OF CAUSE—FILING OF PETITION—JURISDICTION OF THE STATE COURT—Where a cause has been commenced, and is pending in a state court, and one of the parties thereto files a petition for removal to the United States Court, stating a sufficient cause for removal, the jurisdiction of the state court thereupon ceases. An issue cannot be raised on an allegation in the petition.—*Van Horn* v. *Litchfield, Exrs.*—Filed Oct. 25, 1886.—Ia.

REMOVAL OF PROPERTY UNDER CHATTEL MORTGAGE—POWER TO SELL—Where a mortgagee has foreclosed a chattel mortgage and sold enough of the property to satisfy the debt, and subsequently removes the balance of the goods, he is responsible to the mortgagor for the goods removed, and is bound to return them on demand. A sale under a chattel mortgage will pass a good title to the purchaser although notice of sale was not given strictly as required in the mortgage.—*Campbell* v. *Wheeler.*—Filed Oct. 20, 1886.—Ia.

RENTING PREMISES—AGREEMENT THAT THE PREMISES SHALL BE SUITABLE FOR THE PURPOSE—Where the owner of premises rents

them for a certain purpose, and stipulates that the premises shall be suitable for the purpose for which they are rented, is bound to put the premises in suitable condition within a reasonable time or forfeit his rent, and the question as to what is reasonable time is a question for the jury.—*Young* v. *Collett.* Filed Oct. 28, 1886.—Mich.

REWARD—OBTAINING A REWARD FOR MAKING AN ARREST FOR CONVICTION—Where a reward has been offered for the arrest and conviction of a criminal, and a party has been chiefly instrumental in procuring the arrest and conviction, although he has not been a witness in the case, he is entitled to the reward offered. Where one "works up the case" and arranges the evidence resulting in conviction, he is entitled to the reward—*Rinehart* v. *City of Lancaster*—Filed Oct. 4, 1886.—Pa.

SALE AND WARRANTY—RECISSION FOR BREACH MUST BE MADE IN REASONABLE TIME.—Where a machine was sold and a warranty given for one year, the defendant cannot set up a breach of warranty where he failed to notify the seller of a defect within the warranty and return the machine within a reasonable time. Where an action isbrought on two promissory notes and recovery had on one and judgment for defendant on the other, by accepting payment on the one the plaintiff does not waive the right of appeal on the other.—*Upton Mfg. Co.* v. *Hinske, Admx.*—Filed Oct. 15, 1886.—Ia.

SETTING ASIDE A DEED—CONVEYANCE IN VIEW OF MARRIAGE—PAROL TRUST—Where a man and woman had become "engaged" and are about to marry, the man persuaded his intended wife to convey to him her lands. They were married and for some years he collected and appropriated the rents and profits, and upon his death his children claim the land by descent. The widow files a bill to set aside the deed or to reclaim the title to the land, to which the heirs of her deceased husband interpose a demurrer. *Held*, that the demurrer should have been overruled and defendants required to answer.—*Carney* v. *Carney*—Filed Oct. 28, 1886.—Mich.

SALE BY PARTNER OF HIS INTEREST—DENIAL OF PARTNERSHIP IN ANSWER TO A BILL FOR DISSOLUTION—One partner having sold his interest in the assetts of the firm may maintain a bill for dissolution of the partnership, and where a bill is filed, and in answer the partnership is denied, yet both parties consent to the appointment of a receiver, that is a conclusive admission of the existing partnership.—*Russell* v. *White.*—Filed Oct. 28, 1886.—Mich.

SCHOOL TAX—LIMITATION OF—INTERVENTION OF A TAX PAYER—Where a school district is indebted to the extent allowed by law, and having levied a tax of 10 mills on the dollar for school house purposes, they still have authority to add enough to the assessment to meet the interest due on outstanding bonds, and if they fail to do so the board of supervisors may make the levy. In an action to compel a levy, and the board refuses to defend the action, a citizen may do it.—*Richards, Trustee,* v. *Supervisors Lyon Co.*—Filed Oct. 21, 1886.—Ia.

SEIZURE OF LIQUORS—IN TRANSIT TO THE SOLDIER'S HOME ON LAND CEDED TO THE UNITED STATES—By the statute such liquors as are kept and deposited in the state intended for unlawful sale are liable to seizure. Intoxicating liquors shipped from Portsmouth, N. H., to Togus, Maine, to be sold there to the inmates of the soldier's home, was seized in the freight depot at Portland. *Held*, that as the place to which it was consigned and intended for sale was on land ceded to the United States, it was not subject to seizure under the statute.—*State* v. *Intoxicating liquors.*—Filed Oct. 18, 1886.—Me.

SERVANT'S NEGLIGENCE—RESPONSIBILITY OF MASTER—Where boiler-makers are at work repairing a boiler, and one of the em-

ployes of the boiler-maker are injured by the firing up of the boilers by the regular engineer of the works, it will be presumed that he was directed to fire up by the employes of the boiler-makers, and the owner cannot be held liable for his act.—*Olive, Admr.* v. *Whitney Marble Co.*—Filed Oct. 5, 1886.—N. Y.

SPECIFIC PERFORMANCE—CONTRACT FOR THE SALE OF LAND, THE PURCHASER IN POSSESSION—Where one agreed to sell to another a certain lot of land at a certain price, provided the former could purchase the land, and the latter enters upon the land and makes valuable improvements, and the former obtains a title to the land and in violation of his agreement sells it to another, *Held* that the possession of the land by the latter was notice to all the world, and he is entitled to have specific performance of his contract.—*Veedder* v. *McMurray.*—Filed Oct. 29, 1886.—Ia.

SPECIAL FINDINGS—REVIEW ON APPEAL—WEIGHT OF EVIDENCE—In proceedings by a creditor to reach property of the debtor fraudulently conveyed, where the trial court makes special findings of facts establishing alleged fraud, on appeal the appellate court will not pass upon the weight of the testimony. It will consider only the question whether there is evidence sufficient to sustain the findings of the court below.—*Robinson* v *Denson.*—Filed Oct. 28, 1886.—Mich.

STATUTE OF LIMITATIONS—RIGHTS OF ACTION ON ACCOUNTS—WHAT IS AN ACCOUNT—Where a merchant had an account against an attorney for goods sold and delivered during a period of twelve years, and during the last three years of the twelve the merchant had employed the attorney at sundry times, in an action against the attorney on the account he pleaded the statute of limitations as to a portion of the account. *Held*, that the accounts could not be said to be mutual accounts, and that portion of the merchant's charges not within six years was barred by statute. A transaction will not constitute an account unless an action of account might be brought thereon.—*Mattern* v. *McDivitt.*—Filed Oct. 5, 1886.—Pa.

STATUTE OF LIMITATIONS—RESULTING TRUST—POSSESSION BY ONE OF THE BENEFICIARIES—Where one of the parties, entitled to property under a resulting trust, is in possession of the property it estops the running of the statute as to any one of the *cestuis que trust.* The statute of limitations does not begin to run against a *cestui que trust* until ouster.—*Henderson* v. *Maclay.*—Filed Oct. 4, 1886.—Pa.

STATUTE OF LIMITATIONS—PROCEEDS OF A COLLATERAL NOTE RETAINED—Where one holds a promissory note as collateral security for the payment of a debt, and the note is paid to him in full a portion being in excess of the debt due, and he retains the whole of the money, the statute begins to run as against the owners claim at the time the money is received. When received there is an implied promise to pay it to the owner, by implication of law.—*Brunson* v. *Ballow.*—Filed Oct. 26, 1886.—Ia.

STATUTE OF LIMITATION—ADMINISTRATOR SUING HIMSELF—A mortgagee who is administrator of the estate of the mortgagor, cannot foreclose the mortgage as against himself, nor can he assign it to another for the purpose of foreclosure. A suit begun whilst he is administrator by one to whom he assigned the mortgage, and having resigned the office of administrator, he is substituted for the assignee of the mortgage the suit will be deemed to be commenced at the time of the substitution.—*Brown* v. *Mann.*—Filed Sept. 30, 1886.—Cal.

STREETS AND WAYS—PARTY REFUSING TO ACCEPT DAMAGES ASSESSED—RELEASE—Where proceedings have been had by a city council to open a street, and assessments have been made, one refusing to accept damages assessed, or to release, bringing a writ of *certiorari* to set aside the assess-

ment, the writ will be dismissed.—*Goodell* v *Kalamazoo.*—Filed Oct. 28, 1886.—Mich.

STREET IMPROVEMENTS—HEARING BY INTERESTED PARTIES BEFORE THE BOARD OF FINANCE—Parties interested in the matter of street improvements, cannot demand a hearing before the board of finance, as a legal right on the question of concurrence in a resolution of the board of public works. In proceeding to review an action of the board of public works, the title of members of the board to sit as members cannot be raised—*State* v. *Board of Public Works.*—Filed Oct. 18, 1886.—N. J.

STENOGRAPHERS—COURT STENOGRAPHER MAY FURNISH COPIES AND CHARGE FOR THE SAME—Because a stenographer is employed by the county on a fixed salary does not estop him from contracting for and furnishing to parties copies of testimony taken in a case, and having done so he may recover the contract price for the same.—*Langley* v. *Hill.*—Filed Oct. 21, 1886.—Mich.

TAXES—RAILWAY AID-TAX—PENALTY FOR NON-PAYMENT—Where a tax in aid of a railway company was levied in 1881, and became due and payable in 1882, a party refusing to pay the portion assessed to him up until 1886, is liable for the penalty prescribed in section 866 of the code.—*Tobin* v. *Hartshorn, Treas.*—Filed Oct. 22, 1886.—Ia.

TAXATION—RAILROAD LANDS—FAILURE TO PAY THE ENTRY FEE—Where lands were included within a grant to a railroad company, and the company has earned the lands by the construction of the road, the land is subject to taxation although the company has neglected to pay the entry fee. Such land may be sold for taxes and title passed thereby the same as other lands.—*Price* v. *Lancaster Co.*—Filed Oct. 27, 1886.—Neb.

TAXATION—FAILURE TO RECORD A TAX DEED—ACTION TO SET ASIDE—The statute provides that no action for the recovery of real property shall lie, unless the same is brought within five years after the treasurer's deed is executed and recorded. *Held*, that one holding a tax deed unrecorded could not plead the statute of limitation as to the time of commencing the action, as the statute did not begin to run until the deed was recorded.—*Scroggs* v. *Garver.*—Filed Oct. 23, 1886.—Ia.

TAXATION—EXEMPTION OF CHURCH PROPERTY—A CAMP-MEETING PAVILLION—Under the statute church property is exempt from taxation. A pavillion used by a spiritualistic society for meetings on Sunday, and used for sundry purposes on days and evenings during the week, is not a church property within the meaning of the statute, and is not exempt.—*Camp-Meeting Ass'n.* v. *E. Lyme.*—Filed July 27, 1886.—Conn.

TELEGRAPH COMPANY—RECOVERY OF STATUTORY PENALTY—MESSAGE SIGNED BY AN AGENT—A recovery for failure to deliver a telegraph message can only be had by the party sending the message, but the fact that the name of the sender was signed to the message by an agent does not prevent an action by the party whose name was signed to the message. It is not necessary in a complaint in such action to aver that the party to whom the message was sent lived within one mile of the telegraph station.—*W. U. Tel. Co.* v. *Buskirk.*—Filed Oct. 6, 1886.—Ind.

TIME OF FILING MECHANICS LIEN—PRIORITY OVER A MORTGAGE ANTEDATED—Where a material man files his claim for a mechanics lien within ninety days after furnishing the last item of material, the lien is good as against a mortgage filed prior to the filing of the lien, and after the first item of materials was furnished.—*Mortgage Co.* v. *Shanquest.*—Filed Oct. 29, 1886.—Ia.

TRIAL—INSTRUCTIONS—REFERING THE JURY TO THE PLEADINGS—Where the failure of defendant to construct a ditch is the al-

leged ground of action, it is not error for the court to instruct the jury as though the ditch were constructed. After having clearly defined the issue in the instructions, it is not error for the court to add the remark, "You are referred to the pleadings for the issue." —*Drake* v. *C. R. I. & P. Ry. Co.*—Filed Oct 27, 1886.—Iowa.

TRIAL—SPECIAL FINDS OR GENERAL VERDICT—PRESUMPTIONS—All reasonable presumptions will be indulged in favor of a general verdict, and none in favor special findings. In a case where special findings are not inconsistent with the general verdict, judgment must be rendred thereon without regard to special findings.—*McComas* v. *Haas.*—Filed Oct. 5, 1886.—Ind.

TRIAL—ATTACHMENT OF GOODS FRAUDULENTLY TRANSFERRED—Where goods transferred by a debtor and are subsequently attached by a creditor, and the transferee brings an action against the attaching officer for the value of the goods, and he pleads by way of confession and avoidance, the burden of proof is on the sheriff to show that the goods were fraudulently transferred and that the plaintiff was a party to the fraud.—*Bixby* v. *Carskaddon.*—Filed Oct. 20, 1886.—Iowa.

TROVER AND CONVERSION—GOODS SEIZED WHILE IN TRANSIT—The carrier's duty is to carry the goods safely to their destination and deliver them to the proper party, and if goods in transit are seized by an officer, without authority of law, and delivered to another than the consignee, the carrier is liable for a wrongful conversion of the goods. Conversion is any tortuous act which deprives the owner of his goods, or any illegal use of the goods, or contrary to the intention in the bailment.—*Gibbons* v. *Farwell.* —Filed Oct. 28, 1886.—Mich.

TROVER AND CONVERSION—PROPERTY IN AGENT'S HANDS ATTACHED FOR DEBT OF AGENT—Where property in the hands of an agent is attached by the agent's creditor, and an action of trover and conversian is brought by the owner of the property, it is competent to show all the facts as to the relation of the agent in whose hands the property was attached, to the plaintiff, at the time the property was seized.—*Adams* v. *Kellogg.*—Filed Oct. 14, 1886.—Mich.

TRANSCRIPT OF RECORD—FILING OF AN APPEAL—THE TIME OF FILING—Short-hand notes of the testimony in a case do not become written evidence until transcribed. Where the transcript of the record is required to be filed, in an appeal, within a given time, and within the time allowed the record including the short-hand notes, was filed. *Held*, that this was not a compliance with the requirement as to filing a transcript of the testimony.—*Merrill* v. *Bowe.*——Filed Oct. 22, 1886.—Ia.

TRESPASS VI ET ARMIS—EVIDENCE—REPUTATION OF PARTIES—In an action of trespass *vi et armis*, evidence as to the peac able character of the defendant is not admissable. One charged with trespass in building a fence on the land claimed by another, cannot defend by showing that the judgment of the court in a former case awarded him the right to build a fence in the same place. —*Fahey* v. *Crotty.*—Filed Oct. 28, 1886.—Mich.

USURY—REMEDY FOR RECOVERY—FORECLOSURE OF CHATTEL MORTGAGE CONTAINING A POWER OF SALE—By the terms of the statute a mortgagor of a chattel mortgage which contains a power of sale, may proceed to sell the mortgaged property upon default of payment, without any action of foreclosure. *Held*, that the statute is constitutional. It does not deprive the mortgagor of property without due process of law. Where one has paid usurious interest his remedy is to bring an action against the creditor for the excess of legal interest paid.—*Robinson* v. *McKinney.*—Filed Oct. 4, 1886.—Dak.

VALIDITY OF MORTGAGE—GIVEN TO SECURE FUTURE ADVANCES—A mortgage given to secure a present debt, and also any future advances, is valid to the extent of the debt intended to be secured by it, and a second mortgagee who took with notice of the prior mortgage in foreclosing his mortgage must pay the debt secured by the prior mortgage. —*Taft, Admr.* v. *Stoddard.*—Filed Oct. 4, 1886.—Mass.

VENDOR AND VENDEE—NON-RECORDING OF A DEED——INNOCENT PURCHASER FOR VALUE—One having had lands conveyed to him, did not record his deed, and subsequently conveyed the land to another, whose deed was duly recorded. Subsequently the original purchaser whose deed was not placed on record, conveyed the land to another and upon an action by the first grantee to quiet title to the land, it is *held* that the last purchaser of the land was entitled to protection. —*Huber* v. *Bossart.*—Filed Oct. 19, 1886. —Ia.

VENDOR AND VENDEE—TAX TITLE OBTAINED BY VENDEE IN POSSESSION—A vendee in possession of land cannot acquire a tax title to the land to the prejudice of his vendor. He stands in the relation of a mortgagor as to the unpaid purchase money. Such equitable owner of land may redeem from a tax sale.—*Cowdry* v. *Cuthbert.*—Filed Oct. 26, 1886.—Ia.

VENDOR AND VENDEE—DEED EXECUTED BUT NOT DELIVERED, THE GRANTOR REMAINING IN POSSESSION—The delivery of a deed is essential to its validity, and without delivery, actual or constructive, no title passes. Where a deed is executed and acknowledged and handed to a third party, *intending that it shall be delivered* to the grantee, it has been held sufficient to pass title, 27 Mich. 264. Where a husband, being a debtor, executed a deed of land to another, and he in turn deeded the land to the wife of the former, and both deeds were held by the husband a long time before recording them, the intention of the conveyance being simply to ward off the husband's creditors, and subsequently the wife leaves the husband, he remaining in possession of the land, she sells it to another. *Held*, that the possession of the husband was notice of his interest in the land, and the wife's grantee could not maintain ejectment for the land.—*Stevens* v. *Castle.*—Filed Oct. 14, 1886.—Mich.

VEXATIOUS ACTION—PRESUMPTION—PAYMENT OF COSTS—Where a second action in partition is brought for the same cause between the same parties, in the absence of showing to the contrary. it will be presumed the action is vexatious, and on a plea in abatement the action will be stayed until the cost of former action is paid. Where part of the pleadings is stricken out on motion, the part stricken out constitutes no part of the record on appeal unless made so by order of the court.—*Carrothers* v. *Carrothers.* —Filed Oct. 6, 1886.—Ind.

WAYS—ASSESSMENT FOR—WHEN ASSESSMENT BECOMES A LIEN—As between grantor and grantee, the assessment of a tax for the construction of a gravel road becomes a lien when the county board confirms the report of the committee. Where the grantee has discharged such a lien, and brings an action against the grantor for recovery of the same, the burden is on him to show that it was a subsisting lien at the time of the transfer.— *Kirkpatrick* v. *Pearce.*—Filed Oct. 25, 1886 —Ind.

WAYS—IMPLIED DEDICATION TO THE PUBLIC—Where the owner of land removes a fence so as to leave a strip that would be suitable for a highway, a dedication to the public cannot he inferred therefrom. There must be some act of the owner showing his intention to dedicate it to the public, and an acceptance of the same by the public.—*Rozell* v. *Andrews.*—Filed Oct. 5, 1886.— N. Y.

WAYS AND STREETS—RESERVATION BY GRANTOR IN THE PLAT—Where land was platted and the streets and alleys dedicated to the public on condition that the land for

the streets should revert to the grantor "whenever the same should be discontinued by law," *Held*, that upon a vacation of the streets so platted, by a formal resolution of the city council, the land reverts and vests in the original owner.—*Plumer* v. *Johnson.*—Filed Oct. 14, 1886.—Mich.

WAIVER OF NOTICE—CONDITIONS FOR RENEWAL OF A LEASE—Where a lessee has an express option of a renewal of the lease at the expiration of the term, on express conditions, and at the end of the term he holds over and makes a payment of rent in accordance with the terms of renewal, he will be held to have waived a notice to renew.—*Long, Admr.* v. *Stafford.*—Filed Oct. 5, 1886.—N. Y.

WATERS AND WATER-COURSES—EASEMENT BECOMING APPURTENANT TO LANDS—An easement arising from water flowing from a spring situated upon land not owned by the grantor, will not pass with the estate unless it has become appurtenant to the estate by express or implied grant, or by prescription. There may be such an adverse and continuous use of water which flows through an aqueduct as will raise a presumption of a grant, and title thereto may be acquired by prescription.—*Dority* v. *Dunning.*—Filed Sept. 28, 1886.—Me.

WILL—DOWER RIGHTS—DEVISE OF LIFE ESTATE—By statute, dower at common law is abolished, but instead of dower at common law, the statute gives the wife an interest in the husband's estate. Technically this interest is not called dower, yet if in pleading it be called dower it is thereby sufficiently described. The widow may take dower in addition to a devise to her, unless in the will it is specially provided against. A devise to the wife of a life-estate will not defeat her right of dower.—*Daugherty* v. *Daugherty.*—Filed Oct. 23, 1886.—Ia.

WILL—PROBATE OF—EJECTMENT BY REMAINDER-MAN—A probate court entering the order of probate of a will in the following form, it is *held* sufficient: "It is, therefore, ordered by me that said instrument be admitted to probate as and for the last will and testament, &c." One in whom a remainder over after a life estate is vested, in bringing ejectment to recover the estate, must show the termination of the life estate.—*Kirk* v. *Bowling.*—Filed Oct. 27, 1886.—Neb.

WILL—CHARGES ON LAND—SPECIFIC LEGACY—Words which charge debts upon realty will have the same effect when used in a legacy. See Ogle v. Taylor, 49 Md. 175. By the common law the real estate of deceased person was not liable for his simple contract debts, nor even for his specialty obligations, except where the heir was expressly bound. But in this state the act of 1785 makes real estate of a deceased liable for the payment of all his debts on failure of the personalty. Whether he leaves a will or dies intestate it makes no difference.—*White, Exr.* v. *Kauffman.*—Filed Oct. 9, 1886.—Md.

WILL—RIGHTS OF A WIFE DIVORCED FROM HER HUSBAND—Where a woman is divorced from her husband on the ground of his adultery, she is in no sense his widow. She has no right to share in his personal estate or to letters of administration, nor is it necessary to make her a party to, or give her notice of the probate of his will.—*In Re. Ensign.*—Filed Oct. 5, 1886.—N. Y.

WILLS—CONSTRUCTION—VESTED OR CONTINGENT REMAINDER—The intention of a testator can often be more clearly obtained from the will as a whole than from technical words or phrases. Where under a will the question arises whether a beneficiary takes a vested or a contingent remainder, this must be determined by the testator's intention. Whether a remainder is vested or contingent depends not upon the uncertainty of enjoyment in the future, but upon the uncertainty of the *right* of enjoyment.—*Wiggin, Trustee* v. *Perkins.*—Filed July Jo, 1886.—N. H.

WITNESS—WHAT A GRAND JUROR MAY BE CALLED UPON TO TELL—Where the question is upon setting aside an indictment on the ground that the names of the witnesses examined by the grand jury were not all indorsed on the indictment, a member or members of the grand jury may be called as witnesses to testify as to what witnesses were examined by the jury.—*Ex. Parte Schmidt.* —Filed Oct. 27, 1886.—Cal.

Commonwealth v. *Jones.*
Filed Oct. 23, 1886.—Mass.

(Where it is provided that no intoxicating liquor shall be sold in any place or building within a distance of 400 feet from a public school building, the distance between the buildings is to be determined on a line connecting them at the nearest point of approach.)

Chadwick v. *Davis.*
Filed Oct. 23, 1886.—Mass.

(Where the boundary of land was described as commencing at a stake and stones in a county road, and where there had been some slight change in the roadway, the court instruced the jury that if they found the stake and stones to be on the side of the roadway, then they marked the boundary line where found, but if the stake and stones were not found, then plaintiff's title extended to the middle of the roadway.)

Bajus v. *S. B. & N. Y. Ry. Co.*
Filed Oct. 12, 1886.—N. Y.

(Plaintiff brought his action to recover for an injury received while coupling cars. When he observed his danger he signalled the engineer to stop, but before the engine could be stopped he was injured. The action is based on the fact that the engine was not in good repair and could not be stopped as quickly as if perfect. *Held*, that the defect in the engine was not the proximate cause and that he could not recover.)

Lichtenberg v. *Herdtfelder.*
Filed Oct. 5, 1886.——N. Y.

(Where property is conveyed fraudulently and the grantor dies, the executor, and not a creditor, may bring an action to set the conveyance aside. If an executor is the fraudulent grantee, then he may be removed and an action by other executors to set aside the conveyance.)

Lerian v. *Rohr.*
Filed Oct. 1886.—Md.

(In the trial of an issue of *nul tiel record* in the same court where the record is alleged to be, it is not necessary to produce a formal record, but only to produce the books for the inspection of the court.)

Williams v. *Bunker.*
Filed Sept. 23, 1886.—Me

(Trespass will not lie against an officer serving a replevin writ, if he acts within the scope of his duties, but if the plaintiff in the action is present with the officer, trespass may lie against him when it would not against the officer.)

Dexter v. *McCready.*
Filed July 20, 1886.—Conn.

(In an action of damages from a collission of teams on the highway, it is not the duty of the court to state particular facts which constitute negligence, but such questions are for the jury to determine.)

Brown v. *Commonwealth.*
Filed Oct. 18, 1886.—Pa.

(Where one obtained a license to sell intoxicating liquor, and according to statute executed a bond, and was subsequently convicted of selling liquor illegally, the penalty being a fine or imprisonment, and defendant served the time in prison, this does not discharge the obligation of the bond.)

Bever v. *North.*
Filed Oct. 5, 1886.—Ind.

(In an action for breach of warranty it is sufficient if it shows a judgment and eviction under it. In this state the interest of the wife in her husband's lands is an estate of itself.)

State v. *Bradley.*
Filed July 1886.—Conn.

(The limits of a school district may be extended by prescription, but to sustain the assessment of a tax the limits of the district must be clearly defined.)

Wilbur v. *Josselyn.*
Filed Oct. 18, 1886.—Me.

(Instructions which do not prejudice the interest of a party, although wrongfully given will not be ground for a reversal. Instructions must be based on testimony in the case.)

Maguire, Admx. v. *Selden.*
Filed Oct. 5, 1886.—N. Y.

(The acknowledgement to a third party that a certain one was authorized to act as agent, does not estop the denial of the agency subsequently.)

Nebraska City v. *Rathbone.*
Filed Oct. 27, 1886.—Neb.

(In an action for injury received in consequence of obstructions in the street or sidewalk, when it is shown that there were accumulations of snow and ice on the sidewalk, the question of negligence of the city is one of fact and should be submitted to the jury.)

Bridge v. *Oshkosh.*
Filed Nov. 31, 1886.—Wis.

(The expression of the plaintiff made to his physician, on the day he was injured, touching his injury, is material in an action for damages for the injury, and the exclusion of his testimony on this point is ground for a new trial.)

Fitzgerald v. *Kelso.*
Filed Oct. 23, 1886.—Ia.

(Where land is sold on execution and the price realized is clearly inadequate, and an attempt is made to prevent the debtor from redeeming, the sale will be set aside.)

Anderson v. *Buchanan.*
Filed Oct. 27, 1886.—Neb.

(In an action for a breach of covenant for quiet enjoyment, the plaintiff must allege and prove that he has been ousted of possession, or has yielded the possession to a paramount title.)

Miller v. *McClellen.*
Filed Oct. 23, 1886.—Iowa.

(An agreement of a creditor to extend the time of payment of note, will not release the surety if the agreement is not binding.)

Appeal of Shipe, Admr.
Filed Oct. 4, 1886.—Pa.

(An administrator should not include any part of the assettes of a firm, of which the deceased was a member, in his inventory. The assets of the firm belong to the surviving member for distribution.)

Driggs v. *Phillips.*
Filed Oct. 5, 1886.—N. Y.

(Where town officers remove or destroy property which forms an obstruction in the highway, an action cannot be maintained against them by an individual for the same.)

Cook's Ex'rs v. *Foster's Admr.*
Filed Oct. 18, 1886.—Pa.

(Where an attorney is directed to confess judgment on a warrant, his duty ends there, and he is not bound to notify his client of such confession or to revive the same by *sci. fa.* at the end of five years.)

City of Scranton v. *Silkman.*
Filed Oct. 4, 1886.—Pa.

(The constitution of 1874 prohibits the enactment of a law giving to some counties the right to appeal from an assessment, which it denied to other counties.)

Hays v. *B. E. Val. Ry. Co.*
Filed Oct. 4, 1886.—Pa.

(The law presumes that a lien of more than 20 years duration has been paid.)

Skinner v. *McAllister.*
Filed Oct. 4, 1886.—Pa.

(The sale of land as unseated land, which is in fact seated land, passes no title to the purchaser.)

Gushee v. *Union Knife Co.*
Filed July 8, 1886.—Conn.

(A creditor having a mortgage on one piece of property, and a judgment lien against another, both beloning to the same debtor, may foreclose them both at once, even though one of them is enough to satisfy the debt.)

State v. *Basserman*·
Filed July 8, 1886.—Conn.

(One who is licensed to sell intoxicating liquors in a town, delivers the liquor in a town where no license is granted, makes himself liable as if sold in the town in violation of law, and a delivery by an agent makes the principal liable criminally.)

Morse v. *Frost.*
Filed July 8, 1886.—Conn.

(A number of notes given in payment of property purchased at one and the same time, may be sued on as one in one count, alleging the debt as the aggregate of the whole.)

Cooley v. *Gillan.*
Filed July 9, 1886.—Md.

(Questions not raised and decided in the trial court cannot be reviewed on appeal. Questions not embraced in the record the appellate court will refuse to consider, although not objected to.)

Buchanan v. *Lloyd.*
Filed April 7, 1886.—Md.

(Whenever it is necessary to obtain the decision of the court in construing a will which is ambiguous, the cost of the proceeding should be charged to the residuary fund of the estate.)

Luck, Ex'r. v. *Luck.*
Filed Oct. 4, 1886.—Pa.

(Where one of two joint tenants occupies the premises for years, and derives the benefit of the rents and profits, upon his death his administrator may be called upon to account to the co-tenant. Any expense in fertilizing and improving the land may be set off as against the profits.)

Sleeper v. *Davis.*
Filed July 30, 1886.—N. H.

(A purchaser from a fraudulent vendee, who has simply cancelled a pre-existing debt in payment, cannot retain the goods as against the proper vendor.)

State v. *Brown.*
Filed April 1886.—Md.

(An injunction cannot be made perpetual to restrain the sale of mortgaged property because a part of the mortgage debt is in dispute. The sale of the property may be restrained until the amount of indebtedness is ascertained.)

Criel, Sr., v. *Buckins.*
Filed Oct. 4, 1886.—Pa.

(Where an affidavit of defense is put in by one who is a stranger to the record, it must show on its face the reason why it is made by the stranger instead of by the defendant himself.)

Nat. Bk. v. *Huver, Assignee.*
Filed Oct. 4, 1886.—Pa.

(Where a party had his note discounted at bank, and next day made an assignment for the benefit of creditors, the bank upon learning of the assignment, closed the account and returned the note. *Held*, that the bank had a right to do so as there was a failure of consideration.)

Erie County v. *Erie City.*
Filed Oct. 4, 1886.—Pa.

(Property owned by a city, and used for city purposes, is not subject to a county tax. The public is never subject to tax laws, without express statute. No exemption is needed for any public property.)

Phœnix Ins. Co. v. *La Pointe.*
Filed Oct. 5, 1886.—Ill.

(An instruction wherein witnesses on one side are named and their testimony commented upon unfavorably, and the conflicting testimony on the other side is passed without comment, is calculated to prejudice the jury and is error.)

Hughett v. *Elmer.*
Filed Oct. 5, 1886.—N. Y.

(A question of fact arising from conflicting testimony, cannot be determined by the court of appeals. Sec. 1337 of the code prohibits the court of appeals from considering such question.)

People v. *Jaehne.*
Filed Oct. 5, 1886.—N. Y.

(In the trial of a city officer for bribery where he had confessed the crime, and the fact of his commission of the crime is supported and corroborated by circumstantial evidence tending to establish the truth of the confession, such testimony is sufficient to convict.)

People v. *Rome, W. & O. Ry. Co.*
Filed Oct. 5, 1886.—N. Y.

(Where there are two railroads connecting the same termini, and one of the companies by consolidation, becomes the owner of both roads, the company may abandon one of the roads if it so elects and an action will not lie to compel it to operate the road.)

Nugent v. *Jacobs.*
Filed Oct. 5, 1886.—N Y.

(In an action to set aside a deed on the ground of fraud, the fact that the purchaser paid a fair value for the same is very strong evidence of the good faith on his part, although such fact is not conclusive.)

Post v. *Kreischer.*
Filed Oct. 5, 1886.—N. Y.

(Where one plants oysters in a bed in a bay, and the bed is clearly defined, no oysters growing there spontaneously, the owner of the bed may maintain an action of trespass against an intruder.)

Belden v. *State.*
Filed Oct. 5, 1886.—N. Y.

(Money paid under a mistake of fact may be recovered in an action brought for the purpose.)

Munson v. *S. G. & C. Ry. Co.*
Filed Oct. 5, 1886.—N. Y.

(Where a corporation is a party to a contract, the other party to which is, several persons, including one of the directors of the corporation, the corporation may void the contract on that ground.)

Commonwealth v. *Stevenson.*
Filed Oct. 21, 1886.—Mass.

(The sale of intoxicating liquors to minor by a bar-keeper, is not *prima facie* a sale by the proprietor or owner of the saloon. In the trial of such a case the minor should be allowed to testify to his age.)

Comins v. *Turner's Falls Co.*
Filed Oct. 21, 1886.—Mass.

(Where a navigation company by its charter had the right to erect a dam a certain height, but did not erect it to the full height, and subsequently the company is changed to a manufacturing company and its charter amended, the company will be held to have waived the right to raise the dam to the height originally allowed.)

City of Columbus v. *Sohl.*
Filed Oct. 19, 1886.—Ohio.

(Where street improvements have been made upon a petition signed by the requisite number of property owners, and it subsequently appears that some of the names signed to the petition were not subscribed by the parties themselves, one of the signers cannot resist the payment of the assessment if there was no actual fraud in the matter of the petition.)

Huffman v. *Jones.*
Filed Oct. 18, 1886.—Pa.

(Where a debt has been discharged by bankruptcy proceedings, it cannot be revived except by a clear, explicit and unambiguous promise to pay.)

Daugherty v. *Deardorf.*
Filed Oct. 6, 1886.—Ind.

(In the event that a husband dies leaving neither parent or children surviving him, the wife inherits all the land of which he died seized.)

Hall v. *Hartwell.*
Filed Oct. 21, 1886.—Mass.

(Where there are several attachments and services of the same writ in trustee process, attaching wages of the debtor, it is the intention that the trustee shall reserve $10 for each service.)

Barnard v. *Barnard.*
Filed Oct. 6, 1886.—Ill.

(Where it appears that the mother's consent was obtained to the adoption of a child the order of adoption cannot be collaterally attacked on the ground that the petition did not set forth the mother's residence, or the fact of abandonment by the father.)

Woods v. *Waddle.*
Filed Oct. 19, 1886.—Ohio.

(A woman having obtained a decree of divorce in another state may bring her action subsequently in this state for allimony alone, and the court will determine according to the facts.)

Souder v. *Jeffries.*
Filed Sept. 24, 1886.—Ind.

(A purchaser at sheriff's sale will be protected in his title after ten years adverse possession, although there were irregularities which would have rendered the sale void if taken in time.)

Montgomery v. *Exchange Bank.*
Filed Oct. 18, 1886.—Pa.

(A stock holder and officer of a corporation having access to the books of the corporation, is bound by entries in said books in the same degree as a partner is bound by the books of the firm.)

Brossman v. *L. V. Ry. Co.*
Filed Oct. 4, 1886.—Pa.

An employe, as a general rule, accepts the risk incident to the work in which he is engaged, and cannot recover of his employer for injuries received, unless there was some latent danger to which the employer failed to call his attention and which could not be readily seen.

L. V. Ry. Co. v. *Grenier.*
Filed Oct. 4, 1886.—Pa.

Where a man negligently and without excuse places himself in a position of known danger and thereby suffers injury at the hands of another, either wholely or partly by means of his own act, he cannot recover damages for the injury sustained.

L. V. Ry. Co. v. *Brandtmaier.*
Filed Oct. 4, 1886.—Pa.

It is the duty of a railroad company, as well as the public, to exercise a degree of care commensurate with the danger and the circumstances. In the crossing of a street travelled by many people, the care should be greater than where few people travel.

Dechert v. *Commonwealth.*
Filed Oct. 4, 1886.—Pa.

The comptroller of the city and county of Philadelphia has devolved upon him all the duties of a county auditor. Mandamus will not lie to compel him to countersign a warrant on the treasurer by the chief engineer, where there is a controversy as to the justice of the claim to be paid by the warrant.

Lyon v. *Hayden.*
Filed Sept. 6, 1886.—Vt.

Where an agricultural machine had been delivered, in an action for the price, where issue is whether there was an absolute sale or simply a delivery for trial, the machine having been shown to be in the possession of defendant, it is competent for him to show that he had refused to keep the machine and only at the request of the agent he allowed the machine to remain on his premises.

Carter v. *Koshland.*
Filed Oct. 26, 1886.—Oreg.

(Where a garnishee refuses to furnish a schedule or description of the property of the debtor in his possession, if judgment can be obtained against the debtor, the garnishee becomes liable for the amount of the judgment if property of the defendant, sufficient to satisfy the judgment is not found.)

Sager, Guardian, v. *Galloway.*
Filed Oct. 4, 1886.—Pa.

[A devise to one which provides that he shall take when he arrives at the age of twenty-one years, and if he dies before that age the devise passes to another, vests in the devisee only a contingent estate, and he cannot maintain an action of trespass for damages thereto.]

Daly v. *Multonoma Co.*
Filed Oct. 11, 1886.—Oreg.

[The constitution provides that the "particular services" of any man shall not be demanded without just compensation. An act of the legislature providing that a witness required in a criminal action, living within two miles of the place of trial shall not be entitled to fee or mileage, is not in conflict with the constitution.]

Smith v. *King, Sheriff.*
Filed Oct. 11, 1886.—Oreg.

[It is the duty of the sheriff to remit the excess of taxes wrongfully assessed on property, upon the owner making an affidavit to the fact of the wrongful assessment, and also filing a verified schedule of his taxable property.]

N. P. Lumber Co. v. *East Portland.*
Filed Oct. 11, 1886.—Oreg.

[Where a city is authorized by its charter to contract for improvements and issue warrant sagainst abutting property in payment of the same, it cannot contract for the improvements and agree to pay out of a general fund. Such contract is void.]

Pa. Canal Co. v. *Township.*
Filed Oct. 4, 1886.—Pa.

[Where a township made an agreement with a canal company to pay the latter a certain rental for the privilege of using the towpath a for highway, it is *held* that such agreement was *ultra vires* and the canal company could not recover the rent.]

Ackerman v. *Buckman.*
Filed Oct. 5, 1886.—Pa.

(Municipal corporations may incur only an indebtedness to the amount of two per cent. of the assessed valuation, unless by a vote of the people authorizing a greater amount.

Davis v. *Durgin, Admr.*
Filed July 30, 1886.—N. H.

A decree of the probate court in matters of partition is final and conclusive on the parties and their privies, unless appealed from.

Larre v. *Lewis.*
Filed Oct. 9, 1886.—N. J.

Where one joins as co-mortgagor who has no interest personally in the transaction, he assumes all the liabilities of co-mortgagor the same as though he had an interest in the transaction.

Appeal of McCulloch.
Filed Oct. 4, 1886 —Pa.

A child born out of wedlock, whose parents subsequently marry, and two days before the marriage the father made his will, such child is not an after-born child with reference to the will, and will not be grounds for voiding the will.

Ex. Parte Thomas.
Filed Oct. 6, 1886.—Cal.

[A license tax imposed for selling goods not manufactured in the state, is an attempt to regulate commerce, and is in violation of the constitution.]

People v. *Tidwell.*
Filed July 16, 1886.—Utah.

[Evidence which might have been admitted on chief examination, may in the discretion of the court be admitted in rebuttal.]

Lynn v. *Richardson.*
Filed May 3, 1886.—Me.

(Where a decree is prayed in a bill, which cannot affect the rights of the party if enforced, it will not be granted. Where the petitioner prayed that he might be subrogated to the rights of the mortgagee, he having paid the mortgage debt, the prayer will not be granted, because the right of subrogation already exists because of his payment of the

debt, and a decree could not affect or add to his rights in that particular.)

Danvere v. *Durkin.*
Filed Oct. 25, 1886.—Oreg.

[Error will not be presumed; it must be shown by the record to exist, or the judgment of the lower court will be affirmed. In an appeal in an act of forcible entry and detainer, the appeal will be dismissed if the requisite undertaking has not been filed.]

Billard v. *Ehrhart.*
Filed Oct. 7, 1886.—Kans.

(Where the court has jurisdiction and grants an injunction erroneously, the fact that the injunction was wrongfully granted does not justify its violation before it has been dissolved.)

Hoffman v. *Groll.*
Filed Oct. 7, 1886.—Kans.

(A tax sale certificate, or a tax deed depends chiefly for its validity upon the regularity of the proceedings preceding and up to the sale. The statutory requirements must be strictly complied with.)

Northborough v. *Wood.*
Filed Oct. 22, 1886.—Mass.

(In an action by the holder of a note against the indorsers, it is no defense for the indorsers to set up the fact that they had given the maker their individual note as security for the payment of the note which is the subject of this action.)

Commonwealth v. *Chadwick.*
Filed Oct. 23, 1886.—Mass.

(In an action for the illegal sale of intoxicating liquor, where the defendant admits that he is the proprietor of the place, that he had a license to sell, and that he kept the place, is evidence that the sales made in that place are made by him.)

Elkins v. *Susq. Mut. Ins. Co.*
Filed Oct. 4, 1886.—Pa.

Where the custom of an insurance company is to substitute the personal liability of its agent for defferred premiums, by doing so the company waves the clause in the policy which declares that the policy shall not be in force until the premium is paid.

Morgentheim v. *State.*
Filed Oct. 7, 1886.—Ind.

The number given on the indictment and that on the record elsewhere being different, is no ground for quashing the indictment. It is within the discretion of the court to limit the number of witnesses.

Frost v. *Frost.*
Filed Oct. 30, 1886.—N. J.

A man charged with bastardy, and as a a means of avoiding the legal punishment consequent upon conviction, marries the mother of his illegitimate child. Such a marriage contract is valid and binding, and affords no ground for subsequently obtaining a divorce.

Sprague v. *Drew.*
Filed Oct. 26, 1886.—N. J.

Where one of several children agreed with the parents, in consideration of a conveyance of the homestead, to support the parents during their life, and to pay to the other children the sum of $3,000, and a bond and mortgage were written for that sum but never executed, *Held* that the mortgage will be declared a lien as though it had been executed and delivered.

Appeal of Cornell.
Filed Oct. 4, 1886.—Pa.

The unpaid subscription to the capital stock of a corporation is a trust fund held for the benefit of creditors of the corporation. In a bill to enforce payment by a creditor, it is not necessary that all stockholders or that all creditors be joined.

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